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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 14

REPUBLIC STEEL CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD AND STEEL WORKERS ORGANIZING COMMITTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 7, 1940.

CERTIORARI GRANTED MAY 20, 1940.

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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of
REPUBLIC STEEL CORPORATION
and
STEEL WORKERS ORGANIZING COMMITTEE

Case No. C-184

I.

CHARGE

(Docketed June 21, 1937)

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that

REPUBLIC STEEL CORPORATION

has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2) and (3) of said Act, in that

1) Said Corporation has discharged the following employees because of their membership or activities in the Steel Workers Organizing Committee:

Arthur Ervin Scott, 655 Union St., SW, Warren, Ohio, employed at the Warren, Ohio plant—Discharged March 22, 1937.

James R. Airwyke, R. D. #3, Warren, Ohio, employed at the Warren, Ohio plant—Discharged March 20, 1937.

Joseph Schuster, Cleveland, Ohio, employed in the Upson Nut Division, Cleveland, Ohio—Discharged on or about May 1, 1937.

Mr. Moyer, Massillon, Ohio, an employee of the Corporation at its Massillon, Ohio plant—Discharged May 25, 1937.

John Exall, Cleveland, Ohio; Fred Korecky, Cleveland, Ohio; John Petak, Cleveland, Ohio; Frank Pirichy, Cleveland, Ohio; Michael Marko Naletrich, Cleveland, Ohio; Nicko Brnicevich, Cleveland, Ohio; Gaetano Armeli, Cleveland, Ohio; Guy Kovacevich, Cleveland, Ohio; Thomas Cikah, Cleveland, Ohio; Wilbert Newman, Cleveland, Ohio; Vergo Cernan, Cleveland, Ohio; John Popik, Cleveland, Ohio; Tom Dean, Cleveland, Ohio; George Troyanovich, Cleveland, Ohio; Matt Babich, Cleveland, Ohio; Steve Kohlis, Cleveland, Ohio; John Cholas, Cleveland, Ohio; William Peak, Cleveland, Ohio—Employed at the Corrigan-McKinney Works, Cleveland, Ohio. Discharged on or about May 1, 1937.

2) On or about May 5, 1937, said Corporation suddenly closed down the tin mill at Canton, Ohio. This plant was completely organized by the Steel Workers Organizing Committee. There was absolutely no reason for the close down of this mill because there was plenty of work to be performed. The clear and obvious reason was an effort on the part of the Corporation to coerce and intimidate the employees to discontinue their membership in the Steel Workers Organizing Committee. On May 25, 1937, operations were slightly resumed in this tin mill.

By reason of the above discharges, and particularly by reason of the sudden shutdown of the mill at Canton, Ohio, which shutdown constituted a lockout of employees, the

employees of said Corporation at its various plants struck on May 26, 1937, and said strike has continued down to the date of the filing of this Charge. Inasmuch as the Steel Workers Organizing Committee had theretofore been attempting to obtain a written agreement from said Corporation but had failed to do so since said Corporation refused to enter into any written agreement with the Steel Workers Organizing Committee, one of the demands involved in the strike is the demand for a written agreement with said Corporation.

3) Said Corporation has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act in that:

(a) At all times since the organization of the Steel Workers Organizing Committee, down to the calling of the strike on May 26, 1937, spies and gunmen in the employ of said Corporation followed organizers of the Steel Workers Organizing Committee in their efforts to organize the employees of said Corporation at its Cleveland, Canton, and Youngstown plants, and attacked and beat them.

(b) Foremen, superintendents, and police in the employ of said Corporation threatened employees at its Cleveland, Canton, and Youngstown plants with loss of their jobs if they joined the Steel Workers Organizing Committee.

(c) Since the strike on May 26, 1937, said Corporation has imported a great number of armed thugs and gunmen into the cities where its plants are located for the purpose of interfering with the right of peaceful picketing, and otherwise for the purpose of intimidating the strikers.

(d) At its plant at Warren, Ohio, said Corporation has used various devices and stratagems for the purpose of creating discord and dissension between white and Negro employees of said Corporation so as to destroy morale, lead to race riots, and thus interfere with self-organization.

(e) Said Corporation has acted in collusion with the Chief of Police at Canton, Ohio, in that company police and imported gunmen in the employ of said Corporation have been sworn in by said Chief of Police as special policemen with the sole purpose and intent of interfering with the right of peaceful picketing and otherwise intimidating the employees of said Corporation in the exercise of the rights guaranteed in Section 7 of the Act.

(f) Said Corporation has acted in collusion with Sheriff Ralph Elsor of Mahoning County, Ohio, and Mayor Evans of Youngstown, Ohio, in that company police and imported gunmen in the employ of said Corporation have been sworn in by said Sheriff and Mayor as special police and deputy sheriffs with the sole purpose and intent of interfering with the right of peaceful picketing and otherwise intimidating the employees of said Corporation in the exercise of the rights guaranteed in Section 7 of the Act.

(g) Said Corporation maintains extensive arsenals, including machine guns, rifles, revolvers, tear and bombing gas, riot sticks, etc., for the purpose of intimidating its employees at its Cleveland, Canton, Youngstown, Warren and Niles plants, in the exercise of the rights guaranteed in Section 7 of the Act.

(h) Agents of said Corporation, at its plants at Warren and Niles, Ohio, interfere with the right of peaceful picketing and otherwise intimidate the employees of said Corporation in the exercise of the rights guaranteed in Section 7 of the Act by shooting at pickets from inside said plants, and throwing bolts and other dangerous missiles at them.

4) Said Corporation has dominated and interfered with the formation and administration of labor organizations, and contributed financial and other support to them at its plants at Cleveland, Canton, and Youngstown, Ohio. Said labor organizations purport to exist for the purposes of collective bargaining, but actually have been organized

by said Corporation for the purpose of breaking the strike by back-to-work movements. In connection with such movements, superintendents, foremen, office help and other agents of said Corporation, being paid for so doing, visit members of Steel Workers Organizing Committee, who are on strike, at their homes for the purpose of intimidating them into signing so-called back-to-work petitions upon threat of loss of jobs. Also in connection with such movement, said Corporation has caused to be organized and dominates the John Q. Public League at Warren, Ohio, the Citizens' Committee at Canton, Ohio, and the Vigilantes at Youngstown, Ohio. These organizations consist primarily of imported thugs and gunmen, company police, office help, etc. in the pay and employ of said Corporation. Various public officials in said cities of Warren, Canton and Youngstown, Ohio, are cooperating with said Corporation by arming said persons who are in the pay and employ of said Corporation. All of said acts are done by said Corporation for the purpose of interfering with the right of peaceful picketing, and otherwise for the purpose of intimidating the employees of said Corporation in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LEE PRESSMAN

General Counsel,
Steel Workers Organizing Committee.

3600 Grant Building,
Pittsburgh, Pennsylvania.

Subscribed and sworn to before me this 18th day of June, 1937.

John E. Lawyer,
Notary Public,
District of Columbia.

(Seal)

My commission expires September 8, 1939.

II.

SUPPLEMENTARY CHARGE

(Docketed July 14, 1937)

A charge having been previously filed with the National Labor Relations Board at Washington, D. C. on June 21, 1937, by the undersigned in the above captioned matter, the undersigned, pursuant to Section 10 (b) of the National Labor Relations Act, hereby supplements said charge and alleges that the

REPUBLIC STEEL CORPORATION

has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1), (2), and (3) of said Act in that:

(1) Said corporation has dominated and interfered with the formation and administration of the Employes' Representation Plan and the Independent Federation of Republic Employees, two labor organizations of its employees at its Youngstown, Ohio, plant, and has contributed financial and other support to such labor organizations.

(2) Said corporation by its officers and agents at all times since the organization of the Steel Workers Organizing Committee has threatened various employees at its Youngstown, Ohio, plant with discharge if they joined or assisted said Steel Workers Organizing Committee, and has interfered with, restrained, and coerced its employees in the exercise of the right to self-organization.

(3) Said corporation by its officers and agents on or about March 15, 1937 did discharge Thomas White

and Charles Bernard Fagan for joining and assisting the Steel Workers Organizing Committee.

(4) Said corporation on or about June 23, 1937, to July 2, 1937, has discharged and has refused, upon application, to reinstate to their former positions Frank J. Barany, John Bochu, Dan Bott, Walter Burke, Gustav Robert Carlson, Valare Chismus, Anthony M. DeLong, John E. DeLong, Robert Dunker, James Filbert, Daniel Foley, Ernest M. Franks, William A. Haren, Frank Higgins, Julius Ignat, John J. Janci, Westley I. Kennedy, John Klasovsky, Michael Krill, John Lazar, Joseph G. Miller, Charles Neverdusky, Andy L. Petrencik, Martin Petrencik, Rok Prus, Walter Raithel, Harry Rigby, Mike Romonko, Louis Schettler, Gilbert Shirey, Ernest Sotiros, Joseph Talley (Tulley), Vasile Urs, Gust Valantasis, Draia Vasile, Joseph S. Voytko, Joseph C. Voytko, Arja C. Wagner, Mat Yosenaric, James Yurchison, Joseph Yurchison, and other employees for the reason that said employees left its Youngstown, Ohio, plant on or after May 26, 1937, the day of said strike

(5) By collusion with and through the medium of the company dominated and administered labor organizations at its Youngstown, Ohio, plant, the Employes' Representation Plan and Independent Federation of Republic Employees, said corporation has caused to be circulated so-called back-to-work petitions, and has coerced and intimidated its employees into signing said petitions.

(6) Said corporation by its officers and agents, at its Youngstown, Ohio, plant has interfered with the peaceful assemblage and lawful picketing of its employees, and on June 19, 1937 did interfere with the peaceful assemblage and lawful picketing of its employees by shooting at said employees from inside said plant.

(7) By the aforesaid acts said corporation has discriminated in regard to the hire and tenure of employment of its employees within the meaning of Section 8, subdivision (3) of the said Act, dominated and interfered with the formation and administration of labor organizations of its employees and contributed financial and other support to such labor organizations within the meaning of Section 8, subdivision (2) of the said Act, and interfered with, restrained and coerced its employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection within the meaning of Section 8, subdivision (1) of the said Act.

The undersigned further alleges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

LEE PRESSMAN
Steel Workers' Organizing Committee, 3600 Grant Building, Pittsburgh, Pennsylvania.

Subscribed and sworn to before me this 14th day of July, 1937.

ADELIA M. BATEMAN,
Notary Public,
D. C.

(Seal)

III.

SUPPLEMENTARY CHARGE

(Docketed July 14, 1937)

A charge having been previously filed with the National Labor Relations Board at Washington, D. C. on June 21, 1937, by the undersigned in the above captioned matter, the undersigned, pursuant to Section 10 (b) of the National Labor Relations Act, hereby supplements said charge and alleges that the

REPUBLIC STEEL CORPORATION

has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1), (2), and (3) of said act in that:

(1) Said corporation has dominated and interfered with the formation and administration of the Employes' Representation Plan and the Employees Independent Association, two labor organizations of its employees at its Warren, Ohio, plant, and has contributed financial and other support to such labor organizations.

(2) Said corporation by its officers and agents at all times since the organization of the Steel Workers Organizing Committee has threatened various employees at its Warren, Ohio, plant, with discharge if they joined or assisted said Steel Workers Organizing Committee, and has interfered with, restrained and coerced its employees in the exercise of the right to self organization.

(3) Said corporation has since the date of the strike of its employees on May 26, 1937 forced a con-

siderable number of its employees to remain at their jobs within its Warren, Ohio, plant and has threatened them with discharge and the loss of seniority rights and vacation privileges if they left said plant and joined the striking employees.

(4) Said corporation on or about June 23, 1937 to June 30, 1937 has refused, upon application, to reinstate to their former position Anthony Pasquale, John M. Carnahan, Richard Green, William Shank, Sam Maros, Douglas Lee, Frank Cykon, Jr., Paul Lomplak, John Siska, Walter L. Bingham, Hallie P. Hite, Gerald Driscoll, Henry Redmond, and other employees, for the reason that said employees left its Warren, Ohio, plant on or after May 26, 1937, the day of said strike, and has sought to compel Gerald Driscoll, Henry Redmond, and other employees to return as new employees with the loss of their former positions and seniority rights, for the reason that said employees left its Warren, Ohio, plant on or after May 26, 1937.

(5) By the aforesaid acts said corporation has discriminated in regard to the hire and tenure of employment of its employees within the meaning of Section 8, subdivision (3) of the said Act, dominated and interfered with the formation and administration of labor organizations of its employees and contributed financial and other support to such labor organizations within the meaning of Section 8, subdivision (2) of the said Act, and interfered with, restrained and coerced its employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection within the meaning of Section 8, subdivision (1) of the said Act.

The undersigned further alleges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

LEE PRESSMAN
Steel Workers' Organizing Committee, 3600 Grant Building, Pittsburgh, Pennsylvania.

Subscribed and sworn to before me this 14th day of July, 1937.

ADELIA M. BATEMAN,
Notary Public.
D. C.

(Seal)

IV.

COMPLAINT

(Docketed July 16, 1937)

It having been charged by the Steel Workers Organizing Committee, a labor organization, that the Republic Steel Corporation, hereinafter referred to as the respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board, pursuant to the power vested in it by the provisions of the said Act, hereby issues its complaint and alleges the following:

1. The respondent is and has been since April 8, 1930, a corporation organized and existing by virtue of the laws of the State of New Jersey, having its general offices in the City of Cleveland, County of Cuyahoga, State of Ohio, and is now and has continuously for a long period of time been engaged in its plants at Youngstown, Warren, Niles, Canton, Massillon, Cleveland, and other places, all in the State of Ohio, as well as at its many plants in places in the United States other than in the State of Ohio, in the production, assembly, sale and distribution of iron, steel and other metal products.

2. The respondent in the course and conduct of its business causes and has continuously caused over a long period of time, a large quantity of raw materials used in the production of its iron, steel and other metal products to be purchased and transported in interstate and foreign commerce from and through the several states of the United States other than the State of Ohio to its plants in Youngstown, Warren, Niles, Canton, Massillon, Cleveland, and

other places, in the State of Ohio, and causes and has continuously caused a large quantity of iron, steel and other metal products produced by it to be sold and transported by it in interstate and foreign commerce from its plants in Youngstown, Warren, Niles, Canton, Cleveland, and other places, in the State of Ohio, into and through the several States of the United States other than the State of Ohio, and from its plants in places in the United States other than in the State of Ohio, into and through the several states of the United States.

3. The respondent, by its officers and agents, while engaged as described above, on or about March 15, 1937, did discharge Thomas White and Charles Bernard Fagan, employed by the respondent at its Youngstown, Ohio, plant.

4. The respondent by its officers and agents, while engaged as described above, did discharge the hereinafter mentioned individuals employed in its Canton plants at Canton, Ohio, on or about the following dates: Joseph L. Corey and Peter Fontes, May 12, 1937; Will S. Wright, May 5, 1937; Charles Bikoski, April 29, 1937; Sabri Shaban, April 27, 1937; Tom Douglas, February 16, 1937; Mike Ugranovich, February 11, 1937; Michael Wucinick, October 19, 1936; and Victor Arias, August 8, 1936.

5. The respondent, by its officers and agents, while engaged as described above, did discharge the hereinafter mentioned individuals employed in its Massillon plant at Massillon, Ohio, on or about the following dates: Elli Metroff, May 4, 1937; Peter Moryios, May 3, 1937; Feim Gezo, April 30, 1937; and Paul Poulos, April 27, 1937.

6. The respondent, by its officers and agents, on or about March 20, 1937, while engaged as described above, did discharge James R. Airwyke, employed by the respondent at its Warren, Ohio, plant.

7. The respondent, by its officers and agents, while engaged as described above, did discharge, on or about May

1, 1937, the hereinafter mentioned individuals employed in its Corrigan-McKinney works at Cleveland, Ohio: Gaetana Armeli, Matt Babich, Nicko Brnicevich, Vergo Cernan, John Cholas, Thomas Cikah, Tom Dean, John Exall, Steve Kohlis, Fred Korecky, Guy Kovacevich, Michael Marko Noletrich, Wilbert Newman, William Peak, John Petak, Frank Pirichy, John Popik, and George Troyanovich.

8. The respondent has discharged the employees named above in paragraphs 3 to 7 for the reason that they had joined and assisted the Steel Workers Organizing Committee, a labor organization, and engaged in concerted activities with other employees of the respondent for the purposes of collective bargaining and other mutual aid and protection.

9. By its discharge and refusal to reinstate the employees named above in paragraphs 3 to 7 and each of them, as described above, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said employees and each of them, and did thereby discourage and is discouraging membership in the said Steel Workers Organizing Committee, and did thereby and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the said Act.

10. The respondent, by its officers and agents, on or about May 5, 1937, while engaged as described above, did suddenly and without notice cease operations at its tin plate mill in the Canton plant at Canton, Ohio, and did lock out almost all of the employees employed by the respondent at the said tin plate mill, and has at all times since the date of the lockout refused to reinstate the employees so locked out.

11. The respondent locked out and refused to reinstate almost all of the employees in its tin plate mill in the Canton Plant at Canton, Ohio, for the reason that they joined and assisted the Steel Workers Organizing Com-

mittee, a labor organization, and engaged in concerted activities with other employees of the respondent for collective bargaining and other mutual aid and protection, and for the purpose of intimidating and coercing its said tin plate mill employees and other employees of the respondent to discontinue their membership in the said Steel Workers Organizing Committee.

12. By the lockout and refusal to reinstate almost all of the employees in its tin plate mill in the Canton plant at Canton, Ohio, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said tin plate mill employees and did thereby discourage and is discouraging membership in the said Steel Workers Organizing Committee, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the said Act.

13. The respondent, by its officers and agents, prior to May 12, 1937, did threaten employees in its Massillon plant at Massillon, Ohio, with discharge, lay-off and the complete shutdown of said plant, and on or about May 12, 1937, did suddenly and without notice cease almost all of its operations at said Massillon plant and did lock out a considerable number of its employees in said plant.

14. The respondent locked out and failed to reinstate a considerable number of the said employees in its Massillon plant at Massillon, Ohio, for the reason that they joined and assisted the Steel Workers Organizing Committee, a labor organization, and engaged in concerted activities with other employees of the respondent for collective bargaining and other mutual aid and protection, and for the purpose of intimidating and coercing its said employees to discontinue their membership in the said Steel Workers Organizing Committee.

15. By the lockout and the refusal to reinstate a considerable number of the said employees in its Massillon

plant at Massillon, Ohio, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said employees and did thereby discourage and is discouraging membership in the said Steel Workers Organizing Committee, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the said Act.

16. By reason of the conduct of the respondent set forth above in paragraphs 3 to 15 inclusive, and by reason of the respondent's refusal to enter into a written agreement with the Steel Workers Organizing Committee, attempts to negotiate which had theretofore been made by the Steel Workers Organizing Committee, the employees of the respondent at its various plants, on or about May 26, 1937, went out on strike, and said strike has continued to the date of the issuance of this complaint.

17. The respondent has compelled a considerable number of employees at its Warren, Ohio, plant to remain at their jobs within said plant, and has threatened said employees with discharge and loss of seniority rights and vacation privileges if they left its said plant and joined the employees who went out on strike, thereby interfering with, restraining and coercing its employees in the exercise of their right to self-organization within the meaning of Section 8, subdivision (1) of the said Act.

18. The respondent, by its officers and agents, has refused, upon application, to reinstate to their positions, Anthony Pasquale, John M. Carnahan, Richard Green, William Shank, Sam Maros, Douglas Lee, Frank Cykon, Jr., Paul Lomplak, John Siska, Walter L. Bingham, Hallie P. Hite, Gerald Driscoll, Henry Redmond, and other employees at its Warren, Ohio, plant for the reason that they left the said plant during the progress of the aforementioned strike and joined and assisted the Steel Workers Organizing Committee, and has sought to compel Gerald Driscoll, Henry

Redmond, and other employees to return as new employees with the loss of their former positions and seniority rights, for the reason that they left the said plant during the progress of the aforementioned strike at its Warren, Ohio, plant, and joined and assisted the Steel Workers Organizing Committee.

19. By refusing to reinstate the employees named above in paragraph 18, the respondent has discriminated and is discriminating in regard to the hire and tenure of employment of the said employees and has thereby discouraged and is discouraging membership in the Steel Workers Organizing Committee, and has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the said Act.

20. The respondent, by its officers and agents, while engaged as described above, on or about June 23, 1937, to July 2, 1937, has discharged, and has refused to reinstate to their former positions, the hereinafter mentioned individuals employed in its Youngstown plant at Youngstown, Ohio: Frank J. Barany, John Bochu, Dan Bott, Walter Burke, Gustav Robert Carlson, Valare Chismus, Anthony M. DeLong, John E. DeLong, Robert Dunker, James Filbert, Daniel Foley, Ernest M. Franks, William A. Haren, Frank Higgins, Julius Ignat, John J. Janci, Westley I. Kennedy, John Klasosky, Michael Krill, John Lazar, Joseph G. Miller, Charles Neverdusky, Andy L. Petrencik, Martin Petrencik, Rok Prus, Walter Raithel, Harry Rigby, Mike Romonko, Louis Schettler, Gilbert Shirey, Ernest Sotiros, Joseph Talley (Tulley), Vasile Urs, Gust Valantasis, Draia Vasile, Joseph S. Voytko, Joseph C. Voytko, Arja C. Wagner, Mat Yosenaric, James Yurchison, and Joseph Yurchison.

21. The respondent has discharged and has refused to reinstate the employees named above in paragraph 20

for the reason that they have joined and assisted the Steel Workers Organizing Committee, a labor organization, and engaged in concerted activities with other employees of the respondent for the purposes of collective bargaining and other mutual aid and protection.

22. By its discharge and refusal to reinstate the employees named above in paragraph 20, and each of them, as described above, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said employees and each of them, and did thereby discourage and is thereby discouraging membership in the said Steel Workers Organizing Committee, and did thereby and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the said Act.

23. The respondent, by its officers and agents, has dominated and interfered with the formation and administration of the Employes' Representation Plan and the Independent Federation of Republic Employees, labor organizations, at its plant in Youngstown, in the State of Ohio, and has contributed financial and other support to such labor organizations.

24. By dominating and interfering with the formation and administration of said labor organizations at its plant in Youngstown, in the State of Ohio, and by contributing financial and other support to such labor organizations, the respondent has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the said Act.

25. The respondent, by its officers and agents, has dominated and interfered with the formation and administration of Employes' Representation Plan and Employees Independent Association, labor organizations, at its plant in Warren, in the State of Ohio, and has contributed financial and other support to such labor organizations.

26. By dominating and interfering with the formation and administration of said labor organizations at its plant in Warren, in the State of Ohio, and by contributing financial and other support to such labor organizations, the respondent has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the said Act.

27. The respondent, by its officers and agents, has dominated and interfered with the formation and administration of the Plan of Employees Representation (Central Alloy District, Canton works), Employees' Representative Association and Plan of Representation of Employees, labor organizations at its plant in Canton, in the State of Ohio, and has contributed financial and other support to such labor organizations.

28. By dominating and interfering with the formation and administration of said labor organizations at its plant in Canton, in the State of Ohio, and by contributing financial and other support to such labor organizations, the respondent has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the said Act.

29. The respondent, by its officers and agents, has dominated and interfered with the formation and administration of the Employes' Representation Plan and the Employees Representative Association, labor organizations, at its plant in Massillon, in the State of Ohio, and has contributed financial and other support to such labor organizations.

30. By dominating and interfering with the formation and administration of said labor organizations at its plant in Massillon, in the State of Ohio, and by contributing financial and other support to such labor organizations, the respondent has thereby engaged in and is thereby engaging

in unfair labor practices, within the meaning of Section 8, subdivision (2) of the said Act.

31. The respondent, by its officers and agents, has dominated and interfered with the formation and administration of Employes' Representation Plan, a labor organization, at its plant in Cleveland, in the State of Ohio, and has contributed financial and other support to such labor organizations.

32. By dominating and interfering with the formation and administration of said labor organization at its plant in Cleveland, in the State of Ohio, and by contributing financial and other support to such labor organization, the respondent has thereby engaged in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the said Act.

33. The respondent, by its officers and agents, at all times since the organization of the Steel Workers Organizing Committee, has threatened its employees at its plants in Youngstown, Warren, Niles, Canton, Massillon and Cleveland, in the State of Ohio, with discharge if they joined or assisted the Steel Workers Organizing Committee, thereby interfering with, restraining and coercing its employees in said plants in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

34. The respondent, by its officers and agents, including persons specially employed by the respondent for the purpose, has at all times since the organization of the Steel Workers Organizing Committee, down to the date of the strike on May 26, 1937, followed organizers of the said Steel Workers Organizing Committee in their efforts to organize the respondent's employees at its plants in Cleveland, Youngstown, and Warren, in the State of Ohio, and has brutally attacked and beaten said organizers with the inten-

tion and effect of thereby interfering with, restraining and coercing its employees at said plants in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

35. The respondent, by its officers and agents, immediately prior to and since the date of the strike of its employees on May 26, 1937, has considerably increased the number of its police force in its various plants and has used such police for the purpose of interfering with the right of its employees peacefully to picket the plants, and for the purpose of intimidating its striking employees, thereby interfering with, restraining and coercing its employees in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

36. The respondent, by its officers and agents, and in collusion with and through the medium of the various aforementioned labor organizations dominated and controlled by said respondent, has, prior to and since the date of the strike of its employees on May 26, 1937, called upon its employees who are members of the Steel Workers Organizing Committee, at their homes and elsewhere, in Youngstown, Warren, Canton, Massillon and Cleveland, in the State of Ohio, and has intimidated and coerced them into signing so-called back-to-work petitions and other petitions upon threat of loss of their jobs, thereby interfering with, restraining and coercing its employees in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

37. The respondent maintains at its plants in Youngstown, Niles, Warren, Canton, and Cleveland, in the State of Ohio, extensive arsenals, stocked with machine guns, rifles, revolvers, tear gas and other bombs, riot sticks and other dangerous weapons, for the purpose of interfering

with, restraining and coercing its employees at said plants in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

38. The respondent, by its officers and agents, at its plants in Youngstown, Canton, Massillon, Warren, Niles, and Cleveland, in the State of Ohio, has interfered and still does interfere with the right of its employees peacefully to picket said plants and has and still does intimidate its employees at the said plants, by shooting at them and by throwing bolts and other dangerous missiles at them, thereby interfering with, restraining and coercing said employees in the exercise of their right to self-organization, within the meaning of Section 8, subdivision (1) of the said Act.

39. The respondent, through its officers and agents, by each of the acts hereinbefore alleged in paragraphs 3 to 22 inclusive, and by other acts, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the said Act.

40. The activities of the respondent set forth above in paragraphs 3 to 38 inclusive, occurring in connection with the operations of the respondent described in paragraphs 1 and 2 above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states and with foreign countries, and tend to lead to and have led to labor disputes burdening and obstructing commerce, and the free flow of commerce.

41. The aforesaid acts of respondent set forth herein in paragraphs 3 to 38 inclusive, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE, the National Labor Relations Board, on the 15th day of July, 1937, issues this, its complaint, against the Republic Steel Corporation, the respondent herein.

EDWIN S. SMITH,
Member.
DONALD WAKEFIELD SMITH,
Member.
NATIONAL LABOR RELATIONS BOARD.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 21st day of July, 1937, at 10:00 o'clock in the forenoon, at the Auditorium, of the Public Health Service Building, between 19th and 20th Streets at Constitution Avenue, N. W., Washington, D. C., a hearing will be conducted by the National Labor Relations Board on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise and give testimony.

You are further notified that you have the right to file with the National Labor Relations Board, with offices at 1010 Vermont Avenue, N. W., Washington, D. C., an answer to the attached complaint on or before the 21st day of July, 1937.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its notice of hearing, to be signed by its secretary, Benedict Wolf, on the 15th day of July, 1937.

By direction of the Board:

BENEDICT WOLF,
Secretary.

(Seal)

V.

ANSWER OF RESPONDENT, REPUBLIC STEEL CORPORATION

(Docketed Aug. 5, 1937)

Now comes Republic Steel Corporation, a New Jersey corporation, reserving all its constitutional rights and excepting and objecting to the jurisdiction of the National Labor Relations Board, in answer to the complaint filed in the above proceedings by the National Labor Relations Board, now and at all times denying the right of the Complainant to assert any claim thereunder concerning this Respondent, and at all times saving and reserving unto itself all manner of benefit and advantage of exceptions which can or may be taken to the many errors, uncertainties, insufficiencies and other imperfections contained in the said complaint, says:

Respondent denies that the Steel Workers Organizing Committee is a labor organization, denies that Respondent has engaged in and is engaging in any unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat., 449, and denies that the National Labor Relations Board has issued complaint herein pursuant to and in accordance with any power vested in it by the provisions of said Act.

1. Answering Paragraph 1 of said complaint, respondent admits the allegations therein contained.

2. Answering Paragraph 2 of said complaint, Respondent admits that in the course and conduct of its business over a long period of time it has purchased and used a large quantity of raw materials in the production of its iron, steel and other metal products and admits that it has pro-

duced and sold large quantities of iron, steel and other metal products but it denies the other allegations of said Paragraph 2 of said complaint as stated therein.

3. Answering Paragraph 3 of said complaint, Respondent specifically denies each and every allegation therein contained.

4. Answering Paragraph 4 of said complaint, Respondent specifically denies each and every allegation therein contained.

5. Answering Paragraph 5 of said complaint, Respondent specifically denies each and every allegation therein contained.

6. Answering Paragraph 6 of said complaint, Respondent specifically denies each and every allegation therein contained.

7. Answering Paragraph 7 of said complaint, Respondent specifically denies each and every allegation therein contained.

8. Answering Paragraph 8 of said complaint, Respondent specifically denies each and every allegation therein contained.

9. Answering Paragraph 9 of said complaint, Respondent specifically denies each and every allegation therein contained.

Further answering, Respondent says that each and every one of the employes mentioned in Paragraphs 3 to 7, inclusive, of said complaint, labored only in the manufacturing or production departments of Respondent, that they took no part in the transportation to and away from Respondent's plant, that they did not participate in any activity which proceeded or followed manufacturing or production; and that none of said employees was engaged in interstate or foreign commerce within the true meaning of the National Labor Relations Act or of the Constitution of

the United States of America. Respondent further says that in each case of the persons mentioned in Paragraphs 3 to 7 inclusive of the said complaint, where any of them were laid off they were laid off for good and sufficient lawful and business reasons.

10. Answering Paragraph 10 of said complaint, Respondent specifically denies each and every allegation therein contained.

11. Answering Paragraph 11 of said complaint, Respondent specifically denies each and every allegation therein contained.

12. Answering Paragraph 12 of said complaint, Respondent specifically denies each and every allegation therein contained.

13. Answering Paragraph 13 of said complaint, Respondent specifically denies each and every allegation therein contained.

14. Answering Paragraph 14 of said complaint, Respondent specifically denies each and every allegation therein contained.

15. Answering Paragraph 15 of said complaint, Respondent specifically denies each and every allegation therein contained.

16. Answering Paragraph 16 of said complaint, Respondent says that on or about May 26, 1937, a small percentage of its employes went out on strike but not for the reasons stated in Paragraph 16, and with the foregoing explanation Respondent denies each and every allegation contained in Paragraph 16. Respondent further says that the strike was called by Steel Workers Organizing Committee, acting pursuant to the direction of Committee for Industrial Organization, without any cause or justification and solely for the selfish benefit and advantage of those committees, in an attempt to gain control of employes of the Respondent and, generally, of all steel company em-

ployes; that at the time the strike was called, there was no labor dispute between the Respondent and its employes, and no differences as to wages, hours or working conditions, that a large percentage of the Respondent's employes did not go on a strike but remained at work, and that others returned to work promptly after the Ohio National Guard had been called out to protect them while going to and from the Respondent's mills, factories and plants, against assaults, violence, coercion and intimidation on the part of the strikers and of the Steel Workers Organizing Committee and its agents and representatives.

17. Answering Paragraph 17 of said complaint, Respondent specifically denies each and every allegation therein contained.

18. Answering Paragraph 18 of said complaint, Respondent specifically denies each and every allegation there contained, and further says that each of the persons mentioned therein labored only in the manufacturing or production departments of Respondent, that they took no part in the transportation to or away from Respondent's plant, that they did not participate in any activity which proceeded or followed manufacturing, and that none of said employes was engaged in interstate or foreign commerce within the true meaning of the National Labor Relations Act, or of the Constitution of the United States of America.

19. Answering Paragraph 19 of said complaint, Respondent specifically denies each and every allegation therein contained.

20. Answering Paragraph 20 of said complaint, Respondent specifically denies each and every allegation therein contained, and further says that each of the persons mentioned therein labored only in the manufacturing or production departments of Respondent, that they took no part in the transportation to or away from Respondent's plant, that they did not participate in any activity which

preceded or followed manufacturing, and that none of said employes was engaged in interstate or foreign commerce within the true meaning of the National Labor Relations Act, or of the Constitution of the United States of America.

21. Answering Paragraph 21 of said complaint, Respondent specifically denies each and every allegation therein contained.

22. Answering Paragraph 22 of said complaint, Respondent specifically denies each and every allegation therein contained.

23. Answering Paragraph 23 of said complaint, Respondent specifically denies each and every allegation therein contained.

24. Answering Paragraph 24 of said complaint, Respondent specifically denies each and every allegation therein contained.

25. Answering Paragraph 25 of said complaint, Respondent specifically denies each and every allegation therein contained.

26. Answering Paragraph 26 of said complaint, Respondent specifically denies each and every allegation therein contained.

27. Answering Paragraph 27 of said complaint, Respondent specifically denies each and every allegation therein contained.

28. Answering Paragraph 28 of said complaint, Respondent specifically denies each and every allegation therein contained.

29. Answering Paragraph 29 of said complaint, Respondent specifically denies each and every allegation therein contained.

30. Answering Paragraph 30 of said complaint, Respondent specifically denies each and every allegation therein contained.

31. Answering Paragraph 31 of said complaint, Respondent specifically denies each and every allegation therein contained.

32. Answering Paragraph 32 of said complaint, Respondent specifically denies each and every allegation therein contained.

33. Answering Paragraph 33 of said complaint, Respondent specifically denies each and every allegation therein contained.

34. Answering Paragraph 34 of said complaint, Respondent specifically denies each and every allegation therein contained.

35. Answering Paragraph 35 of said complaint, Respondent specifically denies each and every allegation therein contained.

36. Answering Paragraph 36 of said complaint, Respondent specifically denies each and every allegation therein contained.

37. Answering Paragraph 37 of said complaint, Respondent specifically denies each and every allegation therein contained.

38. Answering Paragraph 38 of said complaint, Respondent specifically denies each and every allegation therein contained.

39. Answering Paragraph 39 of said complaint, Respondent specifically denies each and every allegation therein contained.

40. Answering Paragraph 40 of said complaint, Respondent specifically denies each and every allegation therein contained.

41. Answering Paragraph 41 of said complaint, Respondent specifically denies each and every allegation therein contained.

For further answer to said complaint, Respondent says that the complaint of the National Labor Relations Board against the Republic Steel Corporation, Respondent herein, should be dismissed for the following reasons:

(a) Because none of the alleged unfair labor practices complained of affected production, manufacture, sale, or distribution; nor affected, burdened, or obstructed the flow of Respondent's products; nor affected, burdened or obstructed the flow of interstate or foreign commerce, or tended to do so;

(b) Because none of the acts complained of interfered with Respondent's operations, nor caused a labor dispute, nor affected interstate or foreign commerce;

(c) Because none of the acts complained of tended to lead to a labor dispute, nor to burden or obstruct commerce and the free flow of commerce between the various states of the United States and/or foreign countries;

(d) Because none of the persons mentioned in said complaint were engaged in interstate commerce;

(e) Because the National Labor Relations Board has no authority to regulate relations between employers and employes engaged in local production or manufacture;

(f) Because the National Labor Relations Board has no jurisdiction to hear and determine assault and battery and felonious assault cases;

(g) Because the possible effect on interstate commerce of the alleged unfair labor practices complained of is too remote to warrant federal invasion of the rights of the several states where plants of the Respondent are located to regulate the employer and employe relations.

(h) Because all the words, acts and conduct of the Respondent were and have been within the legal and constitutional rights of the Respondent as guaranteed by the Constitution of the United States; and because the Respondent, Republic Steel Corporation has not violated any provision of the National Labor Relations Act;

(i) Because the National Labor Relations Act does not prohibit the normal exercise of the right of the Republic Steel Corporation to select its employes, to lay them off or to discharge them; and further if construed to do so, it is in violation of the Constitution of the United States of America and because any and all terminations of employment of any and all former employe or employes of Republic Steel Corporation named in the complaint herein by Respondent were lawful and for business reasons;

(j) Because the Constitution of the United States of America does not permit Congress or the National Labor Relations Board to regulate the dealing between Respondent and its employes where such employes are engaged in the purely local business of manufacture or production;

(k) Because the said complaint, and particularly Paragraphs 10 to 15, inclusive, 23 to 36, inclusive, and Paragraphs 39 and 40 are so indefinite that they do not inform the Respondent of the issues to be met herein, and therefore, proceeding further hereunder is a denial to the Complainant of due process of law;

(l) Because the issuance of such complaint, the facts and circumstances surrounding the same and under which said complaint was issued, the obvious purpose and intent for which said complaint was filed and the method of conducting proceedings and the procedure thereunder all constitute a denial to Respondent of due process of law and the violation of the rights of Respondent guaranteed to it under the provisions of the Constitution of the United States of America.

(m) Because the Steel Workers Organizing Committee, which filed the charges upon which the complaint is predicated, is not a labor organization, as defined by Section 2, Subdivision 5, of the National Labor Relations Act, and, therefore, is altogether without power or authority to file any charges whatsoever against the Respondent;

(n) Because the individuals, groups and organizations, in whose behalf the Steel Workers Organizing Committee purports to act in filing the charges aforesaid with the National Labor Relations Board, have themselves been guilty of many and repeated wholly unprovoked and unjustifiable acts and deeds of violence, coercion and intimidation against the defendant and its employes, such as to deprive those who filed the charges aforesaid of any standing so to do, and to require the National Labor Relations Board to dismiss the complaint predicated upon such charges.

(o) Because the National Labor Relations Board is altogether without jurisdiction to consider or determine the charges set forth in the complaint herein or to file the said complaint, for the following reasons: The National Labor Relations Act, pursuant to which the National Labor Relations Board was created and vested with certain jurisdiction, power and authority, is altogether void and of no validity in law, as construed and applied by the National Labor Relations Board, because its terms and provisions, if enforced, would deprive employers sought to be made subject to its terms, of due process of law, in violation of the 5th Amendment to the Constitution of the United States, in this, to wit: it gives to an employe the right to file with the Board charges against his employer and provides for a hearing thereof and action thereon against the employer by the Board or the courts of the United States, without giving to the employer a similar or corresponding right against his employe; it provides for a hearing of the charges so filed by an employe against his employer by the

Board or, in the first instance, by an agent or agency designated by the Board, with no restriction or limitation whatsoever as to the kind or character of evidence to be considered by the Board in support of or in answer to such charges, but upon the express condition that the findings of the Board as to the facts, if supported by evidence, shall be conclusive in the premises.

Wherefore, the complaint of the National Labor Relations Board against the Republic Steel Corporation, Respondent herein, should be dismissed.

J. A. Voss,
Director of Industrial Relations
for Republic Steel Corporation.

THOMAS F. PATTON,
Republic Building,
Cleveland, Ohio,
LUTHER DAY,
1420 Union Trust Building,
Cleveland, Ohio,
THOMAS F. VEACH,
1420 Union Trust Building,
Cleveland, Ohio,
DAY, YOUNG & VEACH,
1420 Union Trust Building,
Cleveland, Ohio,
Attorneys for Respondent,
Republic Steel Corporation,
Republic Building,
Cleveland, Ohio.
Dated August 2, 1937.

State of Ohio,
Cuyahoga County, ss:

On this 2nd day of August, 1937, before me, a Notary Public in and for said County, personally appeared J. A.

Voss, who, being by me first duly sworn, says that he is Director of Industrial Relations of the Republic Steel Corporation; that he signed the foregoing answer in behalf of said company and is duly authorized so to do; that he has read the answer by him so signed, knows well the contents thereof, and that the statements therein contained are true, of his own knowledge, except such as are made upon information and belief, and those he verily believes to be true.

E. M. Heid,
(Seal) *Notary Public.*

My Commission expires May 16, 1940.

VI.

ORDER DESIGNATING TRIAL EXAMINER

(Docketed Aug. 3, 1937)

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 3rd day of August, 1937

Present:

J. Warren Madden, Chairman
Edwin S. Smith

In the Matter of
Republic Steel Corporation
and
Steel Workers Organizing Committee

Case No. C-184

A charge having been filed in this matter, and hearing having commenced, with the Board presiding, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that John T. Lindsay act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Secretary.

(Seal)

VII.

MOTION BY REPUBLIC STEEL CORPORATION, RESPONDENT, FOR LEAVE TO INTRODUCE ADDITIONAL EVIDENCE

(Docketed Jan. 21, 1938)

Now comes Republic Steel Corporation, the respondent herein, and respectfully prays the Board to permit it to introduce in its behalf in this proceeding, in addition to the evidence heretofore offered before the Board and the Trial Examiner, the following evidence relating to transactions which occurred after the conclusion of the hearing before the Board and the Trial Examiner, to wit:

(a) Evidence that Valare Chismus, also known as Walter Chizmas, named in paragraph 20 of the compiaint herein as having been improperly discharged and refused reinstatement at the respondent's Youngstown, Ohio plant, did on or about October 20, 1937, in the Court of Common Pleas of Mahoning County, Ohio, enter a plea of guilty to a charge made against him in an indictment returned by the Grand Jury of said Mahoning County, Ohio, as follows, to wit:

"INDICTMENT FOR RIOTING

(Misdemeanor)

The State of Ohio, Mahoning County, ss.

In the Court of Common Pleas, Mahoning County, Ohio, of the Term of May in the year of Our Lord, one thousand, nine hundred and thirty seven.

The jurors of the Grand Jury of the County of Mahoning, and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present

all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find and present: That Walter Chizmas late of said County, on the 10th day of June in the year of Our Lord one thousand nine hundred and thirty seven, at the County of Mahoning aforesaid and three other persons, whose names are to the jurors aforesaid unknown, being then and there unlawfully assembled together, unlawfully, riotously and routously did agree with each other then and there to do an unlawful act with force and violence to-wit: they did strike and beat duly authorized officers of the law and did attempt thereby to prevent officers from performing their duty and did then and there unlawfully and riotously make divers movements and great preparation therefor; to-wit: did then and there continue and by jeers and taunts and threats against the lives of said police officers did call upon other men then and there assembled to band together and prevent officers of the law from maintaining peace and order, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

Wm. A. Ambrose,
Prosecuting Attorney."

All as appears in Criminal Docket No. 29, Mahoning County, Ohio, in case No. 14,665 entitled State of Ohio vs. Walter Chizmas";

(b) Evidence that individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, were indicted by the Grand Jury of Mahoning County, Ohio, because of their unlawful acts and conduct in carrying on said strike, and

entered pleas of guilty to the offenses charged against them as hereinafter set forth, as follows:

Carrying Concealed Weapons	9
Riot—unlawfully assembling	66
Interfering with and obstructing railroad	11
Kidnapping—Forcibly detaining	7
Shooting with intent to wound	1
Assault and Battery	2
	96

All as appears on the Criminal Docket in the Court of Common Pleas of Mahoning County, Ohio.

(c) Evidence that Robert Burke, an organizer and leader affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, and actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, was indicted by the Grand Jury of Mahoning County, Ohio, for the offense of rioting—unlawfully assembling, and on being tried therefor, was found guilty by the jury on September 29, 1937:

(d) Evidence that Steel Workers Organizing Committee of the Committee for Industrial Organization, on or about October 22, 1937, by means of a check made payable to William F. Quinlan, Clerk of Courts, paid the sum of Four Thousand Seven Hundred Eleven and 32/100 Dollars ($4,711.32) by way of fines and legal costs in connection with the cases and indictments to which reference is hereinbefore made involving members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, who actively engaged and participated in the strike against the Youngstown, Ohio, plant of respondent;

(e) Evidence that certain members of lodges or unions affiliated with the Committee for Industrial Organiza-

tion and the Steel Workers Organizing Committee who actively engaged in and participated in the strike against the respondent's plants at Youngstown, Mahoning County, Ohio, Warren, Trumbull County, Ohio, and Massillon, Stark County, Ohio, respectively, were indicted by a Grand Jury in the United States District Court for the Northern District of Ohio, Eastern Division, for the offense of obstructing and retarding the passage of the United States mail, and on or about December 20, 1937, pleaded guilty to the charges made against them, all as appears on the records of said United States District Court as follows:

In case No. 15,957 therein, entitled United States of America vs. Mike Walker;

In case No. 15,958, entitled United States of America vs. Tony Crisch;

In case No. 15,959, entitled United States of America vs. Sam Caputo;

In case No. 15,960, entitled United States of America vs. Will Williams;

In case No. 15,961, entitled United States of America vs. Dominic Scarpine;

In case No. 15,962, entitled United States of America vs. Theodore Pictowski, alias Tub, alias Friday;

In case No. 15,963, entitled United States of America vs. Joe M. Morton; (testified as a witness for the Board rec. p. 1084-1117).

In case No. 15,964, entitled United States of America vs. Leo Cox, (testified as a witness for the Board, rec. p. 1014-1052) and Joe M. Morton;

In case No. 15,965, entitled United States of America vs. Kenneth H. Steed, alias Harry K. Steed and Joe M. Morton;

A copy of the indictment against the said Mike Walker in case No. 15,957 is as follows, to wit:

"THE UNITED STATES OF AMERICA

Filed Jul 14 1937

C. B. Watkins, Clerk
U. S. District Court, N. D. O.

Northern District of Ohio
Eastern Division ss: 15957

In the District Court of the United States, within and for the Division and District aforesaid.

At the April Term of said Court, in the year of our Lord, One Thousand, Nine Hundred and Thirty-Seven.

The Grand Jurors of the United States of America, duly impanelled, sworn and charged to inquire of crimes and offenses within and for the body of the Eastern Division of the Northern District of Ohio, upon their oath present and find that

Mike Walker

hereinafter known and referred to as the defendant, late of the Division and District aforesaid, heretofore, to wit, on or about the 12th day of June, 1937, at Youngstown, in the County of Mahoning, State of Ohio, in the Eastern Division of the Northern District of Ohio and within the jurisdiction of this Court, did knowingly, unlawfully and willfully obstruct or retard the passage of mail and a driver or carrier and a conveyance carrying the same, that is to say, that he, the said defendant, in the vicinity of the plant of the Republic Steel Corporation at Stop 5, Poland Avenue, did interfere with, stop and prevent one, Paul A. Ricker, a special delivery messenger and a substitute mail carrier of the Post Office Department at Youngstown,

Ohio, who was then and there in the performance of his duties as such special delivery messenger and substitute mail carrier in the postal service of the United States, from delivering certain mail matter, to wit, three parcels, which the said Paul A. Ricker then and there had in his possession in an automobile for delivery at said place, the said defendant then and there well knowing that the said Paul A. Ricker was an employee in the postal service of the United States, having in his possession at the time, mail matter, and being engaged at the time in the performance of his duties in the delivery of said mail matter, in violation of Section 324, Title 18, United States Code Annotated; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

E. B. FREED,
United States Attorney."

The indictments against the other persons herein named are similar in form and substance to that just hereinbefore set forth.

The Respondent herein further prays the Board for leave to introduce in its behalf in this proceeding, evidence that the various plants of the respondent mentioned in the complaint herein and involved in the strike, had, on or before the 30th day of July, 1937, resumed normal operations and were employing a normal working force in the light of and measured by the business then on hand and production carried on at respondent's said plants and the business then on hand and production carried on generally at said time at other steel plants comparable to the respondent.

The Respondent further prays the Board, in the event it overrules this motion as to any or all of the items of evidence hereinbefore described and sought to be introduced,

to grant leave to respondent to make and submit and have incorporated in the record in this proceeding as a part thereof, an offer or offers to prove with relation to the evidence so excluded in such form as shall protect and safeguard the rights of respondent in the premises.

The Respondent represents to the Board that this motion for leave to introduce, in its behalf, additional evidence is submitted in good faith, and, in the belief upon respondent's part, that such evidence is relevant and material to the issues herein presented, and is essential to the fair and proper presentation of respondent's defense to the charges made against it in the complaint herein. Respondent further represents to the Board that the granting of this motion for leave to introduce additional evidence or to submit and have incorporated in the record an offer or offers to prove relating to any evidence excluded, would be in the furtherance of justice in this proceeding.

(s) THOMAS F. PATTON,
(s) DAY, YOUNG, VEACH & LEFEVER,
Attorneys for Republic Steel Corporation, Respondent Herein.

VIII.

ORDER GRANTING IN PART AND DENYING IN PART MOTION BY REPUBLIC STEEL CORPORATION FOR LEAVE TO INTRODUCE ADDITIONAL EVIDENCE

(Docketed March 19, 1938)

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 19th day of March, 1938.

Present:

J. Warren Madden, Chairman
Donald Wakefield Smith

In the Matter of
Republic Steel Company
and
Steel Workers Organizing Committee

Case No. C-184

Whereas on January 21, 1938, after the conclusion of the hearings in the above entitled matter, Republic Steel Corporation, the respondent herein, filed a motion for leave to introduce in this proceeding certain evidence relating to transactions which occurred after the conclusion of the hearing before the Board and the Trial Examiner, and

Whereas the respondent further prayed the Board, in the event that it overruled said motion, to grant to the respondent leave to submit and have incorporated in the record in this proceeding as a part thereof an offer to prove with relation to the evidence so excluded,

Now, therefore, the Board, being sufficiently advised in the premises and acting pursuant to Section 38 of National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby orders

a) that the motion for leave to introduce additional evidence be, and it hereby is, denied,

b) that the motion for leave to submit and have incorporated in the record as a part thereof an officer to prove limited to the evidence described in the motion be, and it hereby is, granted.

Provided, however, that the respondent file its offer to prove within ten (10) days from the date of this order.

By direction of the Board:

BEATRICE M. STERN,
Assistant Secretary.

IX.

RESPONDENT'S OFFER TO PROVE IN RE MOTION FOR LEAVE TO INTRODUCE ADDITIONAL EVIDENCE

(Docketed Mar. 28, 1938)

In accordance with the ruling of the National Labor Relations Board, heretofore entered on the 19th day of March, 1938, overruling respondent's motion for leave to introduce additional evidence, but granting respondent leave to submit and have incorporated in the record as a part thereof an offer to prove, limited to the evidence described in the motion, the respondent respectfully asks that an exception be noted to said ruling, and submits its offer to prove, as follows:

A.

That Valare Chismus, also known as Walter Chizmas, named in paragraph 20 of the complaint herein as having been improperly discharged and refused reinstatement at the respondent's Youngstown, Ohio plant, was, because of his unlawful acts and conduct in carrying on the strike against the respondent at said plant, indicted by the Grand Jury of Mahoning County, Ohio, as follows, to wit:

"INDICTMENT FOR RIOTING

(Misdemeanor)

The State of Ohio, Mahoning County, ss.

In the Court of Common Pleas, Mahoning County, Ohio, of the Term of May in the year of Our Lord, one thousand, nine hundred and thirty seven.

The Jurors of the Grand Jury of the County of Mahoning, and State of Ohio, then and there duly im-

paneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find and present:

That Walter Chizmas late of said County, on the 10th day of June in the year of Our Lord one thousand nine hundred and thirty seven, at the County of Mahoning aforesaid and three other persons, whose names are to the jurors aforesaid unknown, being then and there unlawfully assembled together, unlawfully, riotously and routously did agree with each other then and there to do an unlawful act with force and violence to wit: they did strike and beat duly authorized officers of the law and did attempt thereby to prevent officers from performing their duty and did then and there unlawfully and riotously make diverse movements and great preparation therefor; to wit: did then and there continue and by jeers and taunts and threats against the lives of said police officers did call upon other men then and there assembled to bank together and prevent officers of the law from maintaining peace and order, contrary to the statute in such cases made and provided and against the peace and dignity of the State of Ohio.

Wm. A. Ambrose,
Prosecuting Attorney."

and the said Walter Chizmas did, on or about October 20, 1937, enter a plea of guilty to the offense charged against him, as will more fully appear from the records of the Court of Common Pleas of Mahoning County, Ohio, in case No. 14665, entitled State of Ohio v. Walter Chizmas, and the respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

B.

That nine individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, were, because of their unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of carrying concealed weapons, and entered pleas of guilty to the offenses charged against them, all as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title.*
14770	State of Ohio v. John Bell
14910	State of Ohio v. Peter Crioni
14798	State of Ohio v. Gerald Fagan
14745	State of Ohio v. Armando Garcia
14793	State of Ohio v. Sam Parnelli
14786	State of Ohio v. Harold Rink
14740	State of Ohio v. Lee Troiani
14686	State of Ohio v. Paul Woodward
14743	State of Ohio v. Julian Yacibucci

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

That sixty-six individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, were, because of their unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of rioting and unlawfully assembling, and entered pleas of guilty to the offenses charged against them, all

as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title*
14838	State of Ohio v. Duno Antonelli
14760	State of Ohio v. Second Babero
14778	State of Ohio v. Nick Bachanni
14767	State of Ohio v. Tony Bernardo
14848	State of Ohio v. John Blaine
14844	State of Ohio v. Joseph Bonk
14753	State of Ohio v. Walter Bugozzevicks
14750	State of Ohio v. Thomas Cambana
14759	State of Ohio v. Joe Cattecta
14752	State of Ohio v. Clodio Cernetti
14673	State of Ohio v. Ted Cichon
14762	State of Ohio v. Joe Covich
14764	State of Ohio v. Carmen De Marco
14781	State of Ohio v. Dominic DeWitt
14853	State of Ohio v. John Diller
14755	State of Ohio v. John Dizik
14792	State of Ohio v. Joseph Fagan
14670	State of Ohio v. John Pajack
14915	State of Ohio v. Mike Gregovich
14790	State of Ohio v. Ray Gossept
14780	State of Ohio v. Anthony Govert
14693	State of Ohio v. Woodrow Hoolmayer
14693	State of Ohio v. Walter Hoopingarner
14692	State of Ohio v. Charles Hoopingarner
14668	State of Ohio v. John Huzicka
14765	State of Ohio v. Charles Jasimiska
14664	State of Ohio v. John Fulian
14819	State of Ohio v. Patrick Julian
14675	State of Ohio v. John Kata
14807	State of Ohio v. James Kerr
14789	State of Ohio v. Steve Kenneth
14666	State of Ohio v. Frank Kornak

Case No.	*Title*
14692	State of Ohio v. Ernest Kuntz
14915	State of Ohio v. Joseph Malik
14763	State of Ohio v. Steve Markovitz
14667	State of Ohio v. Walter Melenik
14693	State of Ohio v. Frank Morton
14692	State of Ohio v. Joe Morton
14824	State of Ohio v. Nick Obra
14806	State of Ohio v. Charles Paliskis
14758	State of Ohio v. James Pallifrone
14779	State of Ohio v. George Paplko
14751	State of Ohio v. Carmen Pengello
14855	State of Ohio v. Angelo Petrillo
14748	State of Ohio v. S. Phatak
14674	State of Ohio v. Mike Preston
14845	State of Ohio v. Dominic Prologa
14915	State of Ohio v. Joseph Ramuno
14843	State of Ohio v. George Ratkovich
14747	State of Ohio v. Gay Respinto
14791	State of Ohio v. Harold Rink
14766	State of Ohio v. Vincenzo Romero
14672	State of Ohio v. Mike Sabo
14782	State of Ohio v. Mike Salapsky
14915	State of Ohio v. Joseph Shevitz
14692	State of Ohio v. John Shumar
14829	State of Ohio v. John Skira
14754	State of Ohio v. John Slilsz
14915	State of Ohio v. Joseph Stroney
14839	State of Ohio v. Raymond Vitullo
14671	State of Ohio v. John Vossevell
14796	State of Ohio v. Carlyl Walcott
14663	State of Ohio v. Alex Walsky
14828	State of Ohio v. Jack Warren
14757	State of Ohio v. Vincent Januccl
14821	State of Ohio v. Nick Simione

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

That seven individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, were, because of their unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of kidnapping and forcibly detaining, and entered pleas of guilty to the offenses charged against them, all as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title*
14906	State of Ohio v. Pete Fagan
14906	State of Ohio v. Frank Gregg
14908	State of Ohio v. Trefentalis Leontalis
14906	State of Ohio v. William McBride
14909	State of Ohio v. George Nickola
14906	State of Ohio v. William Steele
14907	State of Ohio v. Frank Yurachich

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

That eleven individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, were, because of their unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of interfering with and obstructing a railroad, and entered pleas of guilty to the offenses charged against them, all as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title*
14699	State of Ohio v. John Bakalar
14699	State of Ohio v. James Carluccio
14804	State of Ohio v. Guissepi Cortez
14810	State of Ohio v. Tony Crish
14809	State of Ohio v. Pat Mele
14808	State of Ohio v. Joe Naples
14823	State of Ohio v. Frank Ranumm
14805	State of Ohio v. Sam Restucci
14811	State of Ohio v. Mike Spanos
14684	State of Ohio v. John Steuben
14803	State of Ohio v. Jesse Young

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

That one individual, a member of a lodge or union affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant, was, because of his unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of shooting with intent to wound, and entered a plea of guilty to the offense charged against him, all as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title*
14702	State of Ohio v. Chester DeWitt

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if so permitted, would so testify.

That two individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, actively engaged and participating in the strike against the respond-

ent at its Youngstown, Ohio plant, were, because of their unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio for the offense of assault and battery, and entered pleas of guilty to the offenses charged against them, all as appears on the records of the Common Pleas Court of Mahoning County, Ohio, as follows:

Case No.	*Title*
14677	State of Ohio v. Fred Fortunato
14676	State of Ohio v. Frank Janik

Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

C.

That Robert Burke, an organizer and leader affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, and actively engaged and participating in the strike against the respondent at its Youngstown, Ohio plant was, because of his unlawful acts and conduct in carrying on said strike, indicted by the Grand Jury of Mahoning County, Ohio, for the offense of rioting—unlawfully assembling, and on being tried therefor, was found guilty by the jury on September 29, 1937, as will more fully appear from the records of the Court of Common Pleas of Mahoning County, Ohio, as follows: Case No. 14688, entitled State of Ohio v. Robert Burke, and the respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

D.

That the Steel Workers Organizing Committee of the Committee for Industrial Organization, on or about October 22, 1937, by means of a check made payable to William F. Quinlan, Clerk of Courts of the Common Pleas Court of Mahoning County, Ohio, paid the sum of Four

Thousand Seven Hundred Eleven and 32/100 Dollars ($4,711.32) by way of fines and legal costs in connection with the cases and indictments to which reference is hereinbefore made involving members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee, who actively engaged and participated in the strike against the Youngstown, Ohio plant of respondent, Respondent believes that the witness William F. Quinlan, the Clerk of said Court, if permitted, would so testify.

E.

That certain members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee who actively engaged in and participated in the strike against the respondent's plants at Youngstown, Mahoning County, Ohio, Warren, Trumbull County, Ohio, and Massillon, Stark County, Ohio, respectively, were, because of their unlawful acts and conduct in carrying on said strike, indicted by a Grand Jury in the United States District Court for the Northern District of Ohio, Eastern Division, for the offense of obstructing and retarding the passage of the United States mail, and on or about December 20, 1937, pleaded guilty to the charges made against them, all as appears on the records of said United States District Court, as follows:

Case No.	*Title*
15957	United States of America vs. Mike Walker
15958	United States of America vs. Tony Crisch
15958	United States of America vs. Sam Caputo
15960	United States of America vs. Will Williams
15961	United States of America vs. Dominic Scarpine
15962	United States of America vs. Theodore Pietgwski alias Tub, alias Friday

Case No.	*Title*
15963	United States of America vs. Joe M. Morton (testified as a witness for the Board, rec. p. 1084-1117)
15964	United States of America vs. Lee Cox (testified as a witness for the Board, rec. p. 1014-1052) and Joe M. Morton
15965	United States of America vs. Kenneth H. Steed, alias Harry K. Steed and Joe M. Morton

A copy of the indictment against the said Mike Walker in case No. 15957 is as follows, to wit:

"THE UNITED STATES OF AMERICA

Filed July 14 1937

C. B. Watkins, Clerk
U. S. District Court, N. D. O.

Northern District of Ohio,
Eastern Division. ss. 15957

In the District Court of the United States, within and for the Division and District aforesaid.

At the April Term of said Court, in the year of our Lord, One Thousand, Nine Hundred and Thirty Seven.

The Grand Jurors of the United States of America, duly impanelled, sworn and charged to inquire of crimes and offenses within and for the body of the Eastern Division of the Northern District of Ohio, upon their oath present and find that

Mike Walker

hereinafter known and referred to as the defendant, late of the Division and District aforesaid, heretofore, to wit, on or about the 12th day of June, 1937, at

Youngstown, in the County of Mahoning, State of Ohio, in the Eastern Division of the Northern District of Ohio and within the jurisdiction of this Court, did knowingly, unlawfully and wilfully obstruct or retard the passage of mail and a driver or carrier and a conveyance carrying the same, that is to say, that he, the said defendant, in the vicinity of the plant of the Republic Steel Corporation at Stop 5, Poland Avenue, did interfere with, stop and prevent one, Paul A. Ricker, a special delivery messenger and a substitute mail carrier of the Post Office Department of Youngstown, Ohio, who was then and there in the performance of his duties as such special delivery messenger and substitute mail carrier in the postal service of the United States, from delivering certain mail matter, to wit, three parcels, which the said Paul A. Ricker then and there had in his possession in an automobile for delivery at said place, the said defendant then and there well knowing that the said Paul A. Ricker was an employee in the postal service of the United States, having in his possession at the time, mail matter, and being engaged at the time in the performance of his duties in the delivery of said mail matter, in violation of Section 324, Title 18, United States Code Annotated, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

E. B. Freed,
United States Attorney."

The indictments against the other persons herein named are similar in form and substance to that just hereinbefore set forth, and the respondent believes that the witness C. B. Watkins, the Clerk of said Court, if permitted, would so testify.

F.

That the various plants of the respondent mentioned in the complaint herein and involved in the strike, had, on or before the 30th day of July, 1937, resumed normal operations and were employing a normal working force in the light of and measured by the business then on hand and production carried on at respondent's said plants and the business then on hand and production carried on generally at said time at other steel plants comparable to the respondent. The respondent believes that officers, agents and employees of the respondent company having knowledge in the premises, if permitted, would so testify.

Respectfully submitted,

THOMAS F. PATTON,
HARRINGTON, HUXLEY & SMITH,
DAY, YOUNG, VEACH & LEFEVER,
Attorneys for Respondent,
Republic Steel Corporation.

X.

DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Issued April 8, 1938)

Case No. C-184

Mr. Mark Lauter, Mr. Lawrence Hunt, Mr. Oscar Grossman, Mr. Joseph M. Hoskins, for the Board.

Mr. Luther Day, Mr. Thomas F. Veach, Mr. Arno Erdrich of Day, Young, and Veach, Cleveland, O.; Mr. J. G. Ketterer, Canton, O.; Mr. H. C. Pontius, of Lynch, Day, Pontius and Lynch, Canton O.; Judge Charles F. Smith, Mr. David E. Jones, Mr. Harry S. Manchester, Mr. R. D. Huxley, and Mr. George Renner, of Harrington, Huxley, and Smith, Youngstown, O.; and Mr. Thomas Patton, Cleveland, O., for the Company.

Mr. Lee Pressman, for the S. W. O. C.

Mr. Allan R. Rosenberg and Mr. Robert Burstein, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon charges and supplementary charges duly filed by Steel Workers Organizing Committee, herein called the S. W. O. C., the National Labor Relations Board, herein

called the Board, issued its complaint, dated July 15, 1937, against Republic Steel Corporation, Cleveland, Ohio, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to unfair labor practices the complaint in substance alleged (1) that during August 1936 and the period from February to May 1937 the respondent discharged and refused to reinstate certain named individuals employed at its plants at Youngstown, Canton, Massillon, Warren, and Cleveland, Ohio, for the reason that they joined and assisted the S. W. O. C. and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection; (2) that on or about May 5, 1937, the respondent locked out and refused to reinstate almost all of its employees at its tin plate mill in the Canton plant, and that on or about May 12, the respondent locked out and failed to reinstate a considerable number of its employees at its Massillon plant, for the reason that they joined and assisted the S. W. O. C. and engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection; (3) that on or about May 26, 1937, by reason of the aforesaid acts of the respondent and its refusal to enter into a written agreement with the S. W. O. C. the employees of the respondent at its various plants went out on strike, which strike continued to the date of the issuance of the complaint; (4) that the respondent compelled a considerable number of employees at its Warren plant to remain at their jobs within the plant, and threatened to discharge such employees if they left the plant and joined the employees on strike, and further refused

to reinstate certain named employees at its Warren plant, and sought to compel others to return as new employees with the loss of former positions and seniority rights, for the reason that they left the plant during the progress of the strike and joined and assisted the S. W. O. C.; (5) that between June 23 and July 2, 1937, the respondent discharged and refused to reinstate to their former positions certain named individuals employed at its Youngstown plant for the reason that they joined and assisted the S. W. O. C. and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; (6) that the respondent dominated and interfered with the formation and administration of certain named labor organizations at its Youngstown, Warren, Canton, Massillon and Cleveland plants; (7) that the respondent threatened its employees at its Youngstown, Warren, Niles, Canton, Massillon and Cleveland plants with discharge if they joined or assisted the S. W. O. C., and by its officers and agents followed and brutally attacked organizers of the S. W. O. C. at its plants in Cleveland, Youngstown and Warren; (8) that the respondent immediately prior to and after the commencement of the strike increased the number of its police force in its various plants and used such police for the purpose of interfering with the right of its employees peacefully to picket the plants and for the purpose of intimidating its striking employees; (9) that the respondent, in collusion with the aforesaid labor organizations dominated and controlled by the respondent, before and after the commencement of the strike called upon its employees at their homes and elsewhere in Youngstown, Warren, Canton, Massillon, and Cleveland, and intimidated and coerced them into signing so-called back-to-work petitions and other petitions, upon threat of the loss of their jobs; (10) that the respondent maintained extensive arsenals at its plants in Youngstown,

Warren, Niles, Canton, and Cleveland for the purpose of interfering with, restraining and coercing its employees in the exercise of their rights to self-organization, and interfered with the right of its employees peacefully to picket its plants by shooting at them and throwing bolts and other dangerous missiles at them; and (11) that by these and other acts the respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Copies of the complaint and notice of hearing to be held on July 21, 1937, at Washington, D. C., were duly served upon the respondent and the S. W. O. C. Pursuant to this notice, on July 21, 22, 23, and 24, 1937, a hearing was held in Washington, D. C., before the Board. At the outset of the hearing, the respondent moved to adjourn and transfer the hearing to Cleveland, Ohio. The Board denied this motion, but granted the respondent until August 4, 1937, to file its answer to the complaint. Thereafter, without waiving any of its objections to jurisdiction, the respondent participated in the hearing.

In its answer, dated August 2, 1937, the respondent denied the allegations of unfair labor practices alleged in the complaint, denied that the employees named in the complaint were engaged in interstate commerce, admitted that its employees went out on strike, but denied that they went out on strike for the reasons alleged in the complaint, and alleged that the strike was called by the S. W. O. C., acting pursuant to the direction of Committee for Industrial Organization, without any cause or justification and solely for the selfish advantage of those committees in an attempt to gain control of the employees of the respondent and generally of all steel company employees. The answer further alleged, inter alia, that at the time the strike was called

there was no labor dispute between the respondent and its employees, and no difference as to wages, hours, and working conditions; that a large percentage of the respondent's employees did not go on strike but remained at work and that others returned to work promptly after the Ohio National Guard had been called out to protect them while going to and from the respondent's plants, against assaults, violence, coercion and intimidation on the part of the strikers and of the S. W. O. C. and its agents and representatives; that none of the alleged unfair labor practices complained of interfered with the respondent's operations, caused a labor dispute or affected or tended to affect commerce; that the Board has no jurisdiction to hear and determine assault and battery and felonious assault cases; and that the complaint was so indefinite as not to inform the respondent of the issues to be met, and therefore further proceeding thereunder was a denial to the respondent of due process of law.

Thereafter, pursuant to notice, the hearing was continued before John T. Lindsay, the Trial Examiner duly designated by the Board. Hearings were held from August 9 to August 12 in Canton, Ohio, from August 21 to August 24 in Youngstown, Ohio, on August 27 and August 28 in Cleveland, Ohio, from September 1 to September 16 in Canton, Ohio, from September 17 to September 21, in Youngstown, Ohio, and from September 23 to September 27, in Cleveland, Ohio. The Board, the respondent, and the S. W. O. C. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

During the hearing, the Trial Examiner granted a motion by counsel for the Board to amend the complaint by striking therefrom the names of certain employees al-

leged to have been discriminatorily discharged or refused reinstatement. At the close of the Board's case, the respondent moved to dismiss the complaint on the grounds that the alleged unfair labor practices did not affect interstate commerce and were not established by the evidence. The Trial Examiner denied the motion. At the close of the respondent's case, the Trial Examiner granted a motion by the attorney for the Board that the complaint be conformed to the proof adduced during the hearing.

During the course of the hearing, the Trial Examiner made numerous rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 21, 1938, the respondent filed a motion with the Board for leave to introduce additional evidence, or in the alternative, to submit and have incorporated in the record as a part thereof, an offer to prove with relation to the evidence so excluded. On March 28, 1938, pursuant to an appropriate order of the Board, the respondent submitted its offer to prove.[1]

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent, Republic Steel Corporation, is a New Jersey corporation with its principal executive offices in

1. The Trial Examiner took under advisement, without ruling on their admissibility in evidence, Respondent's Exhibits Nos. 16, 17, 18 (sample ballot; certification of the result of a poll conducted by the Canton Chamber of Commerce among the respondent's employees in Canton to determine whether they wished to go back to work or stay out on strike; and a printed handbill, allegedly distributed by the Union, urging non-strikers to join the strike within the next 12 hours "after that your safety will be your own responsibility.") These exhibits will be admitted.

Cleveland, Ohio. Its total assets as of 1936 were valued at $343,950,000. On May 1, 1937, the respondent and its subsidiaries employed 59,282 persons, 40,172 of them in the Ohio plants.

The respondent has developed an organization which is highly integrated from the mining of ore and other raw materials to the manufacture and distribution of a widely diversified line of finished products. In a registration statement filed with the Securities and Exchange Commission on October 21, 1936, the respondent described its business as follows:

> "The registrant (Republic Steel Corporation) is primarily an operating company, but certain divisions of its business are conducted through subsidiaries. It is engaged in the manufacture and sale of a diversified line of iron and steel products and ranks as the third largest steel company in the United States, having an annual ingot capacity of approximately 6,053,000 tons. The products of the registrant include pig iron, semi-finished steel, alloy steels, special steels, billets, bars, pipe, hot and cold rolled sheets, and strip, tin and terne plate, bolts and nuts, fabricated material and other products. It is a leading manufacturer of alloy steels, including stainless steel and high tensile steels, and is an important producer of steel for the automobile industry and of electrically welded pipe."[2]

The respondent and its subsidiaries—36 in number—operate numerous manufacturing plants. The principal iron

2. Board's Exhibit No. 108. The acquisition of Gulf States Steel Co. in April 1937 further strengthened the respondent's position as the third largest producer of steel in the United States. It provided the respondent with a well-integrated unit located at Gadsden, Alabama, having annual production facilities for about 400,500 tons of ingots, 297,600 tons of finished hot roll steel products, and finishing facilities for turning out large amounts of wire and wire products, nails and staples, sheets, and miscellaneous products used chiefly in the southern market.

and steel producing, manufacturing, and finishing plants which are in operation or have been operated within a recent period are located at Youngstown, Warren, Cleveland, Canton, Massillon, Niles, Campbell, and Elyria, Ohio; Brooklyn and Buffalo, New York; Chicago and Moline, Illinois; Hartford and Unionville, Connecticut; Pittsburgh and Beaver Falls, Pennsylvania; Gary and Muncie, Indiana; Monroe, Michigan; Cumberland, Maryland; Minneapolis, Minnesota; Birmingham and Gadsden, Alabama; Los Angeles, California; and Hamilton, Ontario, Canada. The respondent obtains more than half of its requirements of iron ore and coal from its own mines and the balance from the mines of companies in which it has an interest and by purchase from others. The respondent and its subsidiaries own or hold under lease extensive iron ore properties in Michigan, Minnesota, and Alabama; and coal properties in Pennsylvania, Kentucky, and West Virginia.

We are concerned in this case particularly with the Ohio plants of the respondent located at Massillon, Canton, Youngstown, Warren, Niles, and Cleveland. With respect to these plants, both the outgoing shipments of iron and steel products and the incoming shipments of raw materials are preponderantly interstate in character. Thus, at the Canton works, shipments of products to points outside of Ohio for the year 1936 aggregated in value $19,717,266.36, whereas the shipments to points within Ohio aggregated $6,704,783.29; at the Massillon works, the respective aggregates were $17,533,026.74 and $4,823,432.13; at the Youngstown works, $25,321,814.36 and $5,176,815.58; at the Warren works, $24,014,830.69 and $11,891,949.34; at the Niles works, $754,829.05 and $2,932,243.42; and at the Cleveland works, $14,523,006.98 and $7,485,938.65.[3]

3. These products include semi-finished carbon, carbon bars and bar products, stainless sheet and strip and miscellaneous alloy, alloy bars, electric

The respective aggregates in value of the principal raw materials which originate outside of Ohio and those which originate within Ohio are approximately as follows: Canton—$7,681,335 and $3,907,721; Massillon—$5,312,093 and $1,567,287; Youngstown—$15,395,589 and $1,762,342; Warren—$5,961,680 and $1,397,822; Niles—$122,542 and $71,276; Cleveland—$13,685,764 and $3,706,148.[4]

II. THE UNION

While the record contains no detailed evidence relating to the structure and function of the Steel Workers Organizing Committee and the Amalgamated Association of Iorn, Steel and Tin Workers of North America, we have found upon numerous occasions in other cases, and the record as a whole in this case makes clear, that these organizations are labor organizations affiliated with the Committee for Industrial Organization.[5]

III. THE UNFAIR LABOR PRACTICES

All the plants of the respondent are operated as part of a single, integrated business, and its labor policy in each plant is directed from a single source. The unfair labor practices alleged in the complaint relate to the respondent's plants in the Massillon, Canton, Youngstown, Warren and

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weld pipe, butt weld pipe, lap weld pipe, semi-finished alloy, sheets, hot rolled strip, hot rolled strip sheets, cold rolled strip, cold rolled strip sheets, miscellaneous scrap, and northern pig iron.

4. These raw materials include coal, iron, ore, limestone, sinter, scrap, ferro manganese, ferro silicon, nickel, vanadium, molybdenum, chrome ore, tin, spelter, dolomite, fluor spar, brick, acid, clay, lime, fuel oil, moulds and tools, pyrites, magnesite, sand, soda ash, crushed silica rock, ganister and flue dust.

5. Matter of *Jones and Laughlin Steel Corporation*, Case No. C-57, I N. L. R. B. 503; Matter of *Wheeling Steel Corporation*, Case No. C-3, I N. L. R. B. 699; Matter of *Fansteel Metallurgical Corporation*, Case No. C-235, 5 N. L. R. B. No. 124; Matter of *Petroleum Iron Works Company*, Case No. R-255, 3 N. L. R. B. No. 77; Matter of *Lunkenheimer Company*, 4 N. L. R. B. No. 131; Matter of *Combustion Engineering Company, Inc.*, R-242, 5 N. L. R. B. No. 61.

Cleveland districts. We take up in order the events occurring in each of these cities.

A. Massillon

The respondent and its wholly owned subsidiary, Union Drawn Steel Company, operate two plants in or near Massillon: the Massillon Works (Central Alloy District) located in Stark County, just outside the city limits, employing approximately 3200 employees; and the Union Drawn Steel Company plant located in the City of Massillon, at some distance from the Massillon Works, and employing approximately 450 employees.

We turn first to the Plan of Employee Representation and its successors at the Massillon Works—the Employees' Representative Association and the Independent Association of Republic Employees. Against this background we consider the organizing campaign of the S. W. O. C., the strike which began on May 25, 1937, the Back-to-Work movement, the activities of the Law and Order League of Massillon, and the tragic history of the July days of the strike.

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1. *The Plan of Employee Representation and its successors,—the Employees' Representative Association and the Independent Association of Republic Employees*

In June 1933, the respondent prepared and introduced in its Massillon Works "A Plan of Employee Representation." Similar plans were introduced at the same time in its other plants and in the steel industry at large. The formal outlines of the Plan were contained in the Articles, drawn up by the respondent and distributed to the employees at the time of its inauguration. As expressed in the Plan, its purpose was to provide "an orderly and ex-

peditious procedure for the prevention and adjustment of any future differences, to insure justice, maintain tranquillity and promote the common welfare."

The Plan functioned through Joint Committees, composed of representatives of the employees and Company representatives named by the management. The Employee Representatives were elected annually on the basis of one representative for every 200 employees in each department.[6] All the Employee Representatives elected throughout the Massillon Works constituted the General Body of Employee Representatives. After each annual election the General Body chose members for four standing committees. These committees, with the addition of Company Representatives who might equal but could not exceed in number the Employee Representatives, constituted the Joint Committees.

If an employee was unable to adjust a grievance with the foreman of the work on which he was engaged, he might take the matter up either in person or in writing through his Employee Representative, first with the superintendent concerned, second with the Management Representative,[7] third with the management, which either tried to effect a settlement or, with the approval of all the parties, referred the matter to the proper Joint Committee. If, thereafter, the dispute had not been satisfactorily set-

6. Only employees who were 21 years of age or over and who were American citizens, were eligible to be Employee Representatives.

7. The Management Representative was appointed by the management to facilitate close relationships between the management and the Employee Representatives. He was to respond to requests from Employee Representatives; to attend, but not vote at meetings of the Joint Committees; to refer for the management any matter to any committee of Employee Representatives, and refer to the Management any matter presented by a committee of Employee Representatives. Upon the joint approval of the Chairman of the General Body of Employee Representatives and the Management Representative depended the right of all committees and of the General Body of Employee Representatives to hold special meetings or regular meetings at any other time than that provided for in the Plan.

tled within a reasonable time the employee through his Representative or the management through the Management Representative might require the matter to be referred to the Joint Appeals Committee, which, in its turn, attempted to effect a settlement. If this failed, the Plan provided that the President of the Company should be notified and the matter referred to arbitration, "if the President and a majority of the Employee Representatives on the Joint Appeals Committee agree to such reference."

The Plan also provided that the Company should defray all the expenses of the operation of the plan, including the pay of Employee Representatives. No provision, therefore, was made for dues or for the office of treasurer. Likewise there was no provision for membership in the Plan, all employees having the right to vote for Employee Representatives, and no provision for general meetings of employees. Finally, the Plan could be amended only by two-thirds vote of the entire membership of the Joint Committee on Rules, Ways, and Means, or by concurrent majority vote of both the General Body of Employee Representatives and the Representatives of the Management at an annual conference.[8]

Under these provisions of the Articles the respondent retained full control over the operations of the Plan. No amendment was possible without the respondent's approval. No matter could be referred to arbitration unless the respondent agreed. Not only was there no provision for meetings of employees as a body, but in fact the employees were precluded from any direct concern with the functioning of the Plan. All the expenses, including the

8. During the fall of 1936, a Central Council, composed of Employee Representatives selected by the General Body of each of the respondent's plants, was informally instituted. All of its expenses were borne by the respondent. In March 1937, at meetings of the Central Council in the respondent's offices in Cleveland, a revision was proposed and amendments adopted, formally incorporating the Central Council in the Articles of the Plan.

time spent by Employee Representatives at meetings or adjusting grievances, were met by the respondent. Even the right of the General Body and all committees of Employee Representatives to hold special meetings or regular meetings at any other time than that provided in the Plan, depended on the approval of the respondent. Thus behind its outward semblance of democratic procedure and its announced purposes of insuring justice and promoting the common welfare, the Plan was shrewdly designed to foreclose genuine collective bargaining and to fix firmly in the hands of the respondent an indisputable control over its employees.

From start to finish, the Plan was the respondent's own. The respondent prepared it, inaugurated it, and continued it in effect for almost four years, without ever submitting it, for acceptance, alteration or rejection, to a vote of its employees. Further, the respondent lost no opportunity, through statements of its officials and otherwise, to impress upon its employees the virtues of the Plan and to exhibit its opposition to "outside unions."[9] Thus the respondent dictated the type of representation and "collective bargaining" it was willing to allow its employees to have.

The following incident illustrates the manner in which the Plan operated:

At the regular monthly meeting of the General Body of Employee Representatives, held in the respondent's Industrial Relations Building on September 22, 1936, a request was made to the Management Representative for a general wage increase of the employees of the Massillon District. "Mr. Portz (then District Manager for the Cen-

9. Further evidences of the respondent's domination over the Plan are discussed *infra*.

tral Alloy District, Canton and Massillon Works) discussed this item in detail and stated it was impossible for Management to grant this request. He also stated that when all conditions warrant this item will be given consideration."

On November 6 the Massillon newspapers carried an announcement of a general wage increase for the Massillon District. On the following day, Portz called a special meeting of the General Body of Employee Representatives and announced that effective November 16, 1936, wage rates would be increased 5½ cents per hour in the lower wage brackets. Despite the fact that "there was some kick . . . because they hollered about the newspapers having it before the representatives had it," the General Body went through the solemn procedure of voting on a motion that the wage increase be granted. The motion was carried. Such was collective bargaining under the Plan.[10]

On April 13, 1937, the day after the Supreme Court upheld the constitutionality of the Act, Carl Myers, Acting District Manager of the Canton and Massillon Works, summoned the General Body of Employee Representatives to a meeting in the Industrial Relations Building of the Massillon Works and announced that the respondent would withdraw financial support from the Plan. After Myers left the room, the Employee Representatives immediately formed "The Employees Representative Association." Nick Linckenhely and Nathan Brown, chairman and secretary of the General Body of Employee Representatives under the Plan, were chosen by the Representatives as president and secretary of the Association. Paul Hoffman, a Representative under the Plan, was chosen treasurer. For their attendance at this meeting, the Employee Representatives were paid by the respondent.

10. A similar incident occurred in March 1937.

The same committees which had existed under the Plan continued as committees of the Association. Linckenhely testified that the committees "kept on functioning the same as before, that is, committees seeing the foremen about grievances and superintendents"; that the committees continued to be paid by the respondent for handling grievances, "the same as before"; that the committees circulated application cards for membership in the Association throughout the plant and elsewhere on company property, during working hours, on company time; and that the Employee Representatives adopted and used as the constitution of the Association the Plan as amended on April 22, 1937.[11]

The history and nature of these amendments reveal the extent to which the Plan and the Association were subject to the domination of the respondent. At a conference of the Central Council of Employee Representatives in the respondent's offices at Cleveland on March 8, 1937, the question of amending the Plan was discussed but deferred for later consideration. Shortly afterwards E. L. O'Connell, temporary secretary of the Central Council, submitted a proposed revision of the Plan to the Employee Representatives from the various plants and to the respondent's vice president in charge of operations and its Director of Industrial Relations at Cleveland. This revision contained minor changes, of a kind calculated to diminish, but in no way to remove, the respondent's control.

Soon after the submission of the proposed revision to the respondent, the decisions of the United States Supreme Court upholding the constitutionality of the Act were handed down. The proposed revision was then further altered. In its final form the amended Plan, while omitting certain of the most obvious practices forbidden by the Act, re-

11. The Plan apparently continued in existence under its original name, at least at other plants, after the formation of the Association at Massillon.

tained the same general structure. Articles dealing with the pay of Employee Representatives and the holding of Central Council meetings in the respondent's general offices were eliminated. The Joint Committees were abolished, though the four committees of Employee Representatives remained. Any matter might be referred by a committee of Employee Representatives to the management through the Management Representative; and the management through the Management Representative might require a grievance which had not been satisfactorily adjusted to be referred to the proper committee of Employee Representatives. Requests for changes in rates of pay were to be considered closed upon a decision of the proper committee of Employee Representatives and the management, unless an appeal was filed in writing by an employee or his Representative with the Management Representative within a period of 3 days after the decision was rendered.

Although the General Body of Employee Representatives were to elect a treasurer, no provision was made for initiation fees, dues, or funds for the payment of any expenses which might be incurred.[12] Employee Representatives continued to be elected on a basis of one for every 200 employees in each department, and meetings of the General Body of Employee Representatives and of the committees were to be held monthly thereafter. No provision was made for meetings of the membership at any time and membership continued to be automatic.[13]

The record does not disclose the circumstances under which the final draft of the proposed revision was pre-

12. There is some evidence that dues of two dollars a year were to be fixed at some future date, but the record contains no evidence that dues were collected by the Employee Representatives or contributed by the employees.

13. As stated above, it appears from the testimony of Linckenhely that, despite the absence of any provision for membership, the committees of the Association did attempt to obtain signatures to membership application cards.

pared or approved. It does appear, however, that mimeograph copies of the Plan as amended, identical for the Massillon and Canton plants, were circulated shortly after April 22, 1937. It was stated in the preamble of the amended Plan that the amendments had been "adopted." Since under the Plan the adoption of amendments required the approval of the respondent, it is a fair inference that the amended Plan—accepted as the constitution of the Association—was, at the very least, approved by the respondent before becoming effective.

As under the Plan, no meetings of the membership of the Association were ever held and the members never participated in or had a voice in its affairs. Pressure by the respondent in favor of the Association and against the outside Union continued as it had under the Plan. Thus Peter Mouyios, as we find below, was laid off on May 3 because of his refusal to join the Association. Again Russell Eckroad, a head rougher in the hot mill, testified that near the end of April at a meeting in the mill of 28 head roughers, Superintendent Alvin Smith, after mentioning a decrease in orders, and the high cost of production at the Massillon Works, said "that he thought everybody was satisfied with the company representation plan . . . if the C. I. O. organization would come in here, that there was still a good chance of not working . . . that possibly it would shut down the plant. If it did not, we would work only one or two days a week after that." Andrew Evans, sheet mill superintendent, announced that he agreed with Smith; and then foreman David Lewis spoke: " 'Boys,' he says, 'we all been working good. We have all been drawing nice pay. . . . If this thing happens, if C. I. O. comes in here, and there is a strike in this plant, and this plant shuts down, a lot of you boys are going to lose your homes, your automobiles and you won't know where your next bite is coming from.' "

The respondent did not call Smith, Evans, or Lewis as witnesses and made no showing as to their unavailability. It did seek to rebut Eckroad's testimony through Arthur Kemp, another employee present at this meeting. Nevertheless, in the light of Smith's speeches on another occasion, referred to hereafter we are inclined to credit Eckroad's version. Even on Kemp's version, however, it is clear that the respondent's supervisory officials were attempting to coerce the employees into joining the Association and not joining the S. W. O. C.

Despite the respondent's efforts to use the Plan and the Association to thwart self-organization among its employees, the S. W. O. C. continued to gain ground in the Massillon plant. On May 25, 1937, the employees at Massillon went out on strike. Throughout the strike the chief figures in the Plan and the Association played leading roles in the Back-to-Work movement. These matters are discussed at length hereafter and we pass now to the formation of the Independent Association of Republic Employees upon the reopening of the plant in July.

On July 6, the day on which he returned to work, Nick Linckenhely, Chairman of the General Body of Employee Representatives under the Plan, President of the Association, and the leading spirit in the Back-to-Work movement, called a noon hour meeting of 16 employees, in the pipe shop of the Massillon Works, to form a successor organization to the Association. Linckenhely testified that he sent for the 16 employees before and during working hours. Four Employee Representatives, in addition to Linckenhely, attended. Because of the odium attached to the use of the word "Representative" in the title of the Association, the committee of 16 decided to name the new organization the Independent Association of Republic Employees, pursuant to a suggestion made at one of the Cleveland meetings of the Central Council of Employee Repre-

sentatives held under the Plan. The committee of 16 also elected as temporary officers the same Employee Representatives who had been officers under the Plan and the Association. With the formation of the Independent, the Association disappeared from the scene.

Later a new set of permanent officers was elected, none of whom, except Linckenhely, the vice chairman, appear to have been officers or Representatives in the predecessor organizations. Twenty-seven Employee Representatives, called the committee of 27, were also elected, on the basis of one for every 200 employees, "to have a way of dealing with the Company, representing the men." Many, if not all, of those elected had been Employee Representatives in the predecessor organizations and active in the Back-to-Work movement. On August 2 and 3, at the call of the chairman of the Central Council of Employee Representatives, the officers of the Independent met in Cleveland to discuss the adoption of a constitution and bylaws. As of September 13, the constitution and bylaws had not been adopted. At the time of the hearing, the Independent claimed to have a membership of approximately 2400, of whom approximately 1900 had paid their initiation fees and dues.

Like its predecessors the Independent was merely the creature of the respondent. The committee of 27 was allowed to obtain dues, initiation fees, and signatures to membership cards in the plant during working hours. Notices of further meetings of the Independent were posted in the plant. In addition, the respondent's officials took an active part in coercing employees to become members of the Independent.

Sherman Ebbert, a member of the Union who returned to work on July 12, testified that on that day, Ralph Ebberly, a head loader, approached him during working hours and asked him to sign a membership card in the Inde-

pendent. He said "it was all right, because it was a union amongst the employees, only it was to keep out any other outside union, and I asked him if it was compulsory and he said yes it is." He said "If you do not join it, we will throw you over the fence." Ebbert promised to give Ebberly an answer later. On the next day, during working hours, Ebberly again asked Ebbert to join the Independent. When Ebbert refused, Ebberly summoned a crowd of 15 or 20 men, including Paul Hoffman, one of the committee of 27, who told Ebbert that unless he joined the Independent, they would refuse to work with him. Ebbert then went to see Peppard, general superintendent of the billet department. "He (Peppard) said 'I understand you are having some trouble with the boys.' And I said 'They claim they will not work with me unless I join their union.' And he asked me why I did not want to join. . . . 'Well,' he said, 'the boys said they won't work with you unless you sign the union card. . . . By God, we are going to work around here and I ain't going to let no one man hold up the work. . . . Now you can go home and think it over. When you decide to do what the boys want you to do, you can come back and go to work.' " As Ebbert was leaving the plant Peppard sent for him, told him that he had straightened the matter out for the time being, and said that he might return to work. Later in the evening, Ebberly called Ebbert away from his work and announced that "the boys have decided they don't want you to come out to work tomorrow." When Ebbert replied that he had been told by Peppard to return to work, Ebberly said "You will have to fight it out with the boys then." As a result, Ebbert signed a membership card in the Independent. On August 6, however, he voluntarily left the plant because he "didn't like the way they was pushing things around there."

George Allen, a crane man employed by the respondent for 12 years and a member of the Union, who returned to

work on July 8, testified that one afternoon during the second week of his return, Thomas Burkhart, treasurer of the Independent, asked him to sign a membership card in the Independent. On the next afternoon, when Allen stated that he had not yet made up his mind, Burkhart said, "If you do not sign this card, the men are going to refuse to work with you and the foreman is not going to do anything about it." Later, Don Lyman, a motor inspector, from whom Allen took orders, advised Allen to sign the membership card in the Independent within the next 2 or 3 days if he wanted to keep his job. On July 27 a committee, consisting of two motor inspectors and 11 or 12 other employees, none of whom worked with Allen, presented him with an ultimatum, "You are either going to sign this card and line up with us or you are going to get out on a picket line with the C. I. O." When Allen refused to sign, the 15 took a vote on the question of whether or not they wanted him to work. John Irwin, a steel foreman, announced the results of the ballot as 12 to 3 in favor of Allen's not working. Another man was assigned to Allen's crane. Allen then appealed to Andrew Evans, superintendent of the hot mill, who sent him to several other supervisory employees. Finally, Allen spoke to Jim Kelvey, head foreman over the electricians, and told Kelvey that the men had taken his job because he would not sign a membership card in the Independent. Kelvey replied "I can't do anything about that. . . . I give you a quit slip if you want to quit." Allen replied that he did not want to quit, that the men had taken his job and put another man on it. Kelvey promised to investigate the matter within the next few days. At the hearing on August 12, Allen testified that he had not yet heard from Kelvey.

The record is plain that, except in name, the Independent was identical with the Plan and the Association. It was formed, at least ostensibly, by the Chairman of the

Plan and the President of the Association. The leading figures were Employee Representatives under the Plan and the Association. It met to adopt its constitution at the call of the chairman of the Central Council of Employee Representatives of the Plan. It replaced the Association, which disappeared upon its advent, and occupied the same place in the respondent's plant as its predecessors. As Linckenhely himself testified:

> "The men wanted it (the Association) abolished on account of the name. . . . That is the only reason we changed the name and formed a new one."

Like its predecessors the Independent was dominated and controlled throughout by the respondent. It was formed on the respondent's property, received the respondent's favors, grew through the respondent's coercion. Further, even aside from actual interference by the respondent with the Independent itself, the Independent could not, in view of the circumstances under which it arose, be considered free from the respondent's influence and control. The leading figures in the Independent were a group of employees plainly under the respondent's domination and known by the employees to be so dominated. The successor to the Plan and the Association could not, by a mere change in name, be freed from the effects of the respondent's previous actions. In addition, the Independent was established under other conditions of flagrant interference with the rights of self-organization, described hereafter. Such an organization, formed in such an atmosphere, could not be considered to represent the free choice of the respondent's employees.

Upon the basis of the entire record we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation at the Massillon plant and of its successors, the

Employees' Representative Association and the Independent Association of Republic Employees, and has contributed financial and other support to them.

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2. *The discharge of Peter Mouyios*

On May 3, during working hours, Employee Representative "Happy" North approached Peter Mouyios, a chipper in the billet department, and asked him what union he wished to represent him. When Mouyios replied that he did not wish to be represented by any union, North said, "Well, I got a card here I am going to fill out for you." Despite Mouyios' insistence that he would not sign or accept the card, North filled it out, signed Mouyios' name, detached the stub, and left it with a fellow employee, from whom Mouyios retrieved it before the hearing. The card, which is in evidence, is an acceptance of membership in the Association. A comparison of Mouyios' signature written at the hearing with his purported signature on the card leaves no doubt that Mouyios' purported signature is not genuine. Mouyios testified that this entire incident took place in the presence of foreman Lefty Hilbert, that an hour and a half later, Hilbert came to where Mouyios was working and told him to go to see Peppard, and that Peppard then laid him off. When Mouyios protested that there were many men in the billet shed with less seniority who were not being laid off and offered to point out such men, Peppard looked at a little book and replied, "Well, I cannot help that."

The respondent contends that Mouyios was laid off, in the regular order of seniority, because of a general reduction in force of approximately 180 chippers. With this contention we cannot agree. Foreman Hilbert testified that he had submitted to Peppard a complaint from Mouyios that two men with less seniority had been retained

and Peppard had shown him a service record, according to which it appeared that both men had been hired before Mouyios. Hilbert stated that the chippers had been laid off, on the basis of a list in Peppard's office, starting from the bottom of the list, but that he did not know whether or not the chippers at the bottom of the list were junior in seniority to the rest, and did not know of his own knowledge whether seniority had been followed. Similarly, Lauriston Miller, a general foreman in the billet and finishing department, testified that he was given a list by Peppard of chippers to be laid off, but did not know whether or not the seniority rule had been violated. It thus appears that Peppard was the only person whose testimony would rebut that of Mouyios. The respondent, however, did not call Peppard as a witness and made no showing as to his unavailability. Although Mouyios did not become a member of the Union until a week after his lay-off, we think it clear that the real reason for his lay-off was his refusal to join the Association.[14]

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3. *Background of the strike; the lockout at the Massillon Works*

In this atmosphere of company unionism and hostility to outside unions, the S. W. O. C. in June 1936 began its campaign to organize the employees of the respondent. Headquarters were established in Canton, approximately eight miles from Massillon, and organizers were sent out to obtain members among the employees in the Canton-Massillon area.[15]

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14. At the time of his lay-off, Mouyios was earning 62½ cents an hour, plus a bonus, which brought his hourly rate to approximately 72 cents an hour, and had been working 3 or 4 hours a day for 5 days a week. Since May 3 he has not earned any money.

15. The Canton and Massillon Works are apparently classified by the respondent for administrative purposes as one region, the Central Alloy District, which is under the supervision of a single District Manager.

On July 2, 1936, the respondent issued the following notice:

"Republic Steel Corporation
and Subsidiaries

"General Office Republic Building, Cleveland, Ohio

"TO OUR EMPLOYEES:

"We are making the following statement so that you will know the attitude of Republic toward the recently announced campaign for unionization of the steel workers.

"The leader of this drive is John L. Lewis, head of the Coal Miners' Union. He is not connected with the steel industry. He has enlisted the help of other organizations not connected with the steel industry. . . . Representatives of radical and communistic groups are helping in this movement. William Z. Foster, chairman of the Communist Party, has announced his support. Foster was the leader in the unsuccessful attempt to unionize the steel industry in 1919.

"WHAT DO THEY WANT?

"John Lewis and his organization want more workers to *pay them more dues*. . . . If they could organize the steel workers they hope to collect $5,000,000 a year from them. Republic employees alone would pay over half a million dollars. Furthermore, they could place dues and assessments at any figure they liked and steel workers would have to pay them.

"The real aim of the present organization drive is to establish a closed shop. They want to force you into the union and make you pay for the right to work. Under a 'Closed Shop' every man has to pay his dues to the union whether he wants to or not. If he gets

behind in his dues, they can throw him out of the union. By this threat they can keep the dues rolling in.

"One of the announced purposes of this drive is to throw out your Employee Representatives whom you have elected for collective bargaining with the management. The union wants to destroy all Employee Representation Plans in the steel industry.

"Your Employee Representation Plan is not run by outsiders. It works. Under your plan, you select your own Employee Representatives—men you know and with whom you work. Under a union you would be represented by outsiders who may know little or nothing about your problems, your management, or the steel industry. Furthermore, you would have no choice in their selection. You would have to accept any bargain they made for you. You would have to pay money to be dictated to by somebody you did not even know.

"WHAT ARE THEIR METHODS?

"The methods customarily used by professional union agitators and organizers are force, coercion, and intimidation of workers and their families. They threaten to call a strike to force men to join their union. They try to force mills to stop operation and keep men from their work for months at a time. They do this to scare men into their union whom they know do not want to join the union.

"WHAT IS REPUBLIC'S STAND?

"Republic stands for the 'Open Shop' principle.

"No employee has to join any organization to get or hold a job.

"Advancement depends on individual merit and effort.

"Republic will not permit any activities within its plant which will:

1. Interfere with the orderly conduct of its operations.

2. Stir up strife or discontent.

3. Threaten the peace and comfort of its workers and their families.

"Every Republic employee owes a duty of loyalty to the Company so that its best interests may be served. Conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management will not be tolerated.

(s) T. M. Girdler
Chairman and President
R. J. Wysor
Executive Vice President and General Manager
C. M. White
Vice President in Charge of Operations
H. B. Carpenter
District Manager."[16]

With this statement of the respondent's policy as a guide, we turn to the history of the union's attempt to organize the employees in Massillon.

From the outset, the organizers were followed and spied upon by paid agents of the respondent. Howard Porter and Guy L. Sweeney, S. W. O. C. organizers, testified that men in old clothes and with a one or two day growth of beard, whom they had previously seen in the uniform of company police at the Union Drawn Steel Com-

16. Italics supplied.

pany, trailed them almost every day for three or four months in all their organizing trips in Canton, Massillon, and even to Louisville and Navarre, Ohio, towns located several miles from Massillon. Among the automobiles driven by these men, the organizers recognized one, a Ford coupe bearing the 1936 Ohio license number E-12, usually driven by the same two men, which invariably followed them. These men made no attempt to conceal their activities. They took rooms in the Northern Hotel in Canton on the fifth floor below the rooms occupied by Sweeney and Porter.

> "Every time an organizer would step out of the hotel . . . this same car E-12 would be following us. . . . There was always two, it was a coupe, 1935 Ford coupe. . . .
>
> "Q. (By Mr. Lauter): They would always follow you in an automobile?
>
> "A. No, at times when we would leave the hotel and go out to breakfast, lunch, or dinner, if we were walking, or making a contact, they would always follow us there walking, because they always parked across from the hotel . . . I have had them follow me into the restaurant, back to the hotel, on the elevator, upstairs and back down again. . . . They would follow me around in Massillon in making contacts. In other words, they would watch me, so that I would not get to see any steel workers because I did not want to get any steel worker in trouble."

On one occasion, after a midnight meeting in a public park of the employees of the 18 inch bar mill of the Massillon Works, these same two men followed one Laughlin, an employee of the respondent who had expressed interest in S. W. O. C., to his home, and for several days afterward were seen parked there for hours at a time. On another occasion, these men, accompanied by 15 or 20 others,

followed several S. W. O. C. organizers to a fish fry at Eagles' Hall in Massillon given by the employees of Union Drawn Steel Company, and succeeded in staying so close to the organizers that they had no opportunity to speak to any of the employees there. On a third occasion, Porter and Sweeney were followed by the men driving the Ford coupe with the license number E-12 to Louisville, Ohio, where they had gone to visit a prospective member. A black sedan with five men cut in ahead of them, half blocking the road; the Ford coupe stopped directly behind them. The organizers escaped from this *cul de sac* but were prevented from visiting their prospective member.

The activities of these men were reported to Sheriff Nist of Stark County, who informed the organizers that if the car followed them out of Massillon into Stark County, again, he would arrest its occupants. On September 23, the two men driving the car with the license number E-12 followed Porter out of Massillon to Navarre, where he stopped at a filling station and telephoned to the Sheriff's office. In a few moments several deputy sheriffs in a cruiser car drove up, apprehended the two men, and took them to the County jail, where they gave their names as Long and McCallister, stated that they were plant policemen at the Union Drawn Mill in Massillon and informed Deputy Sheriff Koellner that they "had business following this car, that it was special work assigned to them as policemen at the Republic Steel Corporation." Porter sought to press charges against them, but was informed by the District Attorney at Canton that there was no law prohibiting such activities. The men then signed waivers, releasing the Sheriff from liability, and left. To all of this testimony, the respondent offered no evidence in rebuttal.

As a result of the respondent's known hostility to the S. W. O. C. and the constant and unconcealed shadowing of union organizers by the respondent's paid agents, the

employees were afraid to be seen in the company of the organizers or even to permit them in their homes. At first, therefore, meetings were secretly held "out of town after night, out in corn fields, in parks, and different places where we thought nobody was watching us." Later, however, as more of the employees joined the S. W. O. C., meetings were held in the open; the membership grew; inroads were made even among the Employee Representatives. In December 1936, New Deal Lodge No. 1124 was chartered by the S. W. O. C.

While the respondent's police were thus engaged in shadowing union organizers, the respondent's foremen and supervisory officials were endeavoring by other means to combat the growth of union sentiment. Thomas Pastorius, an employee who had been approached to join the S. W. O. C., told Kenneth Poorman, a volunteer organizer for the S. W. O. C., "I am a foreman now, and as a foreman I am supposed to quash all talk of organization in the shop." Another employee was forewarned by a superintendent to expect the visit of the organizers and "watch his foot." Joe Morton, a member of the S. W. O. C., testified that foreman David Lewis and Hayden Bright, repeatedly warned him not to talk union to his fellow employees and stated that it was part of their jobs to break up this C. I. O. movement in the plant. Russel Eckroad, rougher in the hot mills, testified that the same David Lewis, after informing him that "Girdler will never sign a contract with the C. I. O.," mentioned something that had happened "up town" at the union hall. When Eckroad asked, "How do you know that?" Lewis replied, "That is all right how I know that. . . . We know things down here 10 minutes after they happen up town, no matter where it is."

In September 1936 Alvin Smith, general superintendent of the sheet mill, sent for Elmer Jordan, a helper

in the sheet inspection department, and asked him what connections he had with the C. I. O. and John L. Lewis. Although Jordan was then a member of the S. W. O. C., he disclaimed any knowledge of the C. I. O., fearing that such an admission would result in his discharge. Smith then proceeded to lecture Jordan as follows:

> "Mr. Jordan, you know as well as I that the steel industry cannot be organized. He said, 'The Republic Steel Corporation has too much money for a thing like that to come in here.' He said you might organize the brick layers and carpenters, they are just a handful of men, but you will never touch Republic Steel. You know what happened down here a few years ago to the men who took an active part in the organization.[17] They lost their jobs. I think the best thing for you to do is lay off."

Several weeks later Jordan was again summoned to Smith's office, where Smith informed him that his work was becoming unsatisfactory.

> "He said, 'You are not on the job. . . . Your foreman is complaining about your not working right, talking to the men too much.' He said, 'You are going to leave the C. I. O. alone or you are not going to have a job here.' 'In other words,' he said, 'if they did, if they asked for recognition, we will shut this plant down, because we are operating now at cost.' "

Jordan testified that Smith again called him to his office in February 1937 and said:

> " 'I see that you did not listen to me when I told you before.' I said, 'I do not know what you are talk-

17. In May 1935, the Amalgamated Association of Iron, Steel and Tin Workers of North America, called a strike at the plant of the Berger Manufacturing Company, a wholly owned subsidiary of the respondent, in Canton, Ohio.

ing about.' He said, 'Well, I see you are one of the active men in the C. I. O. and you have guts enough to go in part of the mill and pass out papers and then come in and take your job.' 'I do, I absolutely have,' I said, 'I did not get paid for it. I am doing it for the benefit of the men in this plant.' He said, 'This plant is going to be shut down. The orders are getting low. We are going to shut this plant down. It seems you are all going to be out of a job.' He said, 'Mr. Chase (assistant superintendent) thinks a lot of you. We were talking here the other day and we were figuring on putting you on an inspection job which you are entitled to.' He said, 'If you keep this thing up that you are doing now, I cannot give you a job.' "

On March 17, 1937, there occurred an event of historic importance in the steel industry: representatives of the Carnegie-Illinois Steel Company, and other subsidiaries of the United States Steel Corporation, met, bargained collectively, and signed a contract with the S. W. O. C., covering wages, hours, and working conditions, and recognizing the S. W. O. C. as the representative of its members who were employees of those companies. On the day following the signing of this contract, the respondent called a special meeting at its Cleveland offices of "the Joint Committee of the Representatives of the Northern Steel Plants and the Subsidiaries."[18] The minutes of this meeting, mimeographed and paid for by the respondent, and distributed to the Employee Representatives, read in part as follows:

"Mr. White (respondent's vice president in charge of operations) addressed the conference and discussed Corporation labor relations with the Representatives.

"Mr. Voss, Director of Industrial Relations, explained all about collective bargaining with the repre-

18. This "Joint Committee" meeting appears to have been a meeting of the Central Council.

sentatives of any group within the employ of our Corporation.

* * * * * *

"The Joint Session showed the efforts of our different units in combating the encroachment of outside groups. The Buffalo and Cleveland Units have a Security League. This league has members avowed to support and help sustain all the activities in connection with the Republic Steel Representation Plan.

"At this point, a motion was made and seconded that all the representatives of both the steel and Subsidiaries back the Management in opposition to all outside labor organizations. This motion was carried unanimously.

"Another motion was made and seconded that each General Body within the Corporation develop methods best suited to their locality in fighting any coercion or intimidation in connection with labor organization. It was, also, suggested that each unit (Steel or Subsidiary) offer to each other the procedure or systems used in their localities to offset any efforts of outside groups.

"Before adjournment, an exchange of thanks between Management and Representatives developed. A very fine spirit of cooperation was manifested by both to carry on under our present set up." [19]

The results of this program of opposition to outside unions appeared almost immediately in those plants of the respondent involved in this proceeding. At Massillon foremen and Employee Representatives distributed petitions among the employees during working hours, stating, "We, the undersigned, are satisfied with our present Plan and

19. Italics supplied.

do not want interference from the outside C. I. O." In the hot mill Employee Representatives circulated a petition reading, "We, the undersigned, are satisfied with the Representation Plan and the wages, hours and conditions of the mill." At first only two or three of the 60 or 65 men in the department signed it. The Employee Representatives then sent for foreman Lewis, who asked:

> "What is the matter with you fellows, you do not want to sign this petition. Everybody up above has signed it . . . Should I bring it down again? . . . If you boys don't sign this, the result of it will be that we won't work very long . . . if we don't sign this thing up and straighten it out like all the rest of the plants are doing, that when the company man went out on the road at the end of the month, he did not know whether he would get us any more orders or not."

When Lewis returned with the petition, the men signed it.

At about the same time, the chippers in the billet department were told by their foremen to lay down their tools and report in groups of ten at a time to general superintendent Peppard's office. There the chippers were met by Employee Representatives, who copied their badge numbers on a slip of paper and informed them, "We called you boys in here to sign, so that with your signatures fixed opposite your badge number that you are satisfied with the kind of employees' representation we got, this kind in the plant." Peter Demos, an employee, testified that he signed the petition under protest, because had he refused, his badge number would have remained on the paper without his signature, thus indicating his refusal to sign. A number of the chippers were apparently unable to read English. Employee Representative Pappas, without reading the petition aloud, explained it to them in Greek. A week or two later, Demos testified, "we saw in the local papers a news

item that the employees of the Republic Steel Corporation, Massillon, rejected the C. I. O. and copies of this . . . petition were sent to the local authorities and to the state authorities to show that the employees were satisfied with the Representation Plan and they did not desire any outside interference from an outside union."

During March, Alvin Smith, general superintendent of the sheet mill, called special meetings of the employees in several departments and threatened them with the loss of their jobs if the respondent were forced to recognize the C. I. O. Joe Morton, a catcher in the hot mill, testified that at a meeting in the Truck Garage of the Massillon Works Smith stated "that he didn't want any of the members there to join the C. I. O., or to join any outside organization that the Employees' Representation Plan had been very successful there, and that we had gotten our recent wage increases through the Employees' Representative Plan and that if the C. I. O. had to be recognized by the Republic Steel they would close down before they would recognize the C. I. O. The high cost of operating under a union contract would not let them work. He also stated that he would hate like hell to see grass growing in the streets of Massillon." Elmer Jordan, a helper in the sheet inspection department, testified that at another meeting in the Truck Garage, Smith "got up on a box . . . and he had a C. I. O. membership card, and he read this card off that I accept membership in the Amalgamated Association. 'Now,' he said, 'boys, I want to tell you one thing, the coal miners, the Mine Workers of America, they will assess them five or ten dollars and take everything out of their pay that they want. That is what will happen to you. They are a bunch of grafters, communists, and they are reds . . . The first thing you can do if you want to hold your job is lay off of this organization . . . In other words, this company has been running in the red for the last three years merely

making expenses . . . Up in Monroe Michigan that plant they took over . . . can operate iron for half the costs they operate it here and save shipping costs."

Although the respondent did not call Superintendent Smith as a witness, it sought through the testimony of others present at these meetings to rebut certain portions of both Jordan's and Morton's testimony. On the whole record, however, we are inclined to believe that Superintendent Smith made the statements reported by Jordan and Morton. Other testimony that Smith made statements of a similar character on other occasions stands entirely uncontradicted. Moreover, the respondent neither called Smith as a witness nor made any showing as to his unavailability. Even from the testimony of the respondent's witnesses, it is apparent that Smith mentioned the possibility that the mill would lose orders and warned the men not to join anything of any kind. Further, at approximately the same time, the respondent's District Managers in other plants were reiterating to meetings of Employee Representatives the respondent's announcement of policy made on July 2, 1936, that the Communist party was supporting the C. I. O., that John L. Lewis, President of the United Mine Workers, wanted to organize steel workers for the money involved, that the respondent stood for the open shop principle, was in favor of the Plan, and would not tolerate conduct which would disrupt what the respondent considered to be the satisfactory relations between the employees and the management. It would be curious, indeed, if the supervisory officials of the respondent explained the respondent's policy in a substantially different way from that in which the respondent's president had stated it.

Shortly after these meetings and within a fortnight after the signing of the Carnegie-Illinois agreement, the union for the first time approached the respondent with a proposal for collective bargaining. On March 30, Clinton

W. Golden, Regional Director of the S. W. O. C. for the Northeastern Region, wrote to Girdler, requesting a convenient date for a conference and enclosing a copy of a proposed agreement, identical in its principal terms with the Carnegie-Illinois agreement. The respondent did not reply.

On May 3 Golden addressed the following telegram to the respondent:

> "On March 30, 1937 we sent you standard collective bargaining contract with request for conference to discuss same stop No acknowledgement or other reply received to date stop Wide spread unrest among employees your company various mills prevails over uncertainty your position regarding signed collective bargaining contract stop This unrest accentuated result lay off several hundred union members your Canton and Massillon Works stop Unless we can have definite assurance from you with date for conference to negotiate written contract without further delay we shall be obliged disavow all responsibility union members in your mills remaining at work."

On May 5, J. A. Voss, Director of Industrial Relations, replied:

> "Your request for a meeting to discuss signed contract has been referred to me for reply. In view of Wagner Act see no necessity for signed contract. The policy of this company has been and is now that it is willing to meet with anyone to bargain with him for whomsoever he represents. In conformity with this general policy the proper representatives of this company will meet with you at any time mutually convenient for collective bargaining purposes. Advise if Tuesday May eleventh my office Cleveland satisfactory for meeting."

On the following day, Golden wired back:

"Your wire fifth received stop Are we to understand you propose in lieu of signed collective bargaining contract that contracting parties commit provisions verbally agreed upon to memory and rely thereon for future reference whenever conferences are necessary to discuss grievances that may arise thereunder stop Do you further propose that management officials in the thirty five mills operated by your company and union grievance committeemen numbering two hundred as well as the sixty thousand employees also indulge in this memorizing process stop Is this your conception of orderly constructive methods of collective bargaining as contemplated by National Labor Relations Act stop If so we consider conference you propose for May 11 futile waste of time and energy stop Do you propose to accept terms similar to those in agreement signed by Carnegie Illinois Steel Corporation and approximately one hundred other companies with representatives of Steel Workers Organizing Committee without undertaking to affix your Company signature thereto stop."

A conference, nevertheless, was held between representatives of the S. W. O. C. and of the respondent in Cleveland on May 11. On the same day, the respondent issued the following statement:

"TO OUR EMPLOYEES:

"The following statement is being made so that you will know the attitude of Republic Steel Corporation toward the effort of the Committee for Industrial Organization (C. I. O.) to force the company to sign their union contract. In its effort to secure such contract, C. I. O. has threatened to call a strike.

"You have a vital interest in this situation. It involves your right to work in peace and to support your family in comfort. We are not convinced that the C. I. O. contract is for the best interests of the employees or the Company. . . ."

After summarizing the letter of March 30, addressed by Golden to the respondent, and the telegrams of May 3, 5, and 6, the statement continued:

"The C. I. O. made no complaints (at the meeting on May 11) relative to wages or hours of Republic employees. In spite of this, the Union demanded that the Company sign their Contract.

"This is the only matter at issue and the Company at the May 11 meeting informed the C. I. O. representatives that it still believes it inadvisable to sign such contract from the standpoint of the employees and of the Company itself.

"Among the reasons for this decision are:

"1. Thousands of our employees, through their representatives, have protested against the signing of any agreement by the Company with the C. I. O. The employees of Republic now have a successful Plan for collective bargaining in which plan a large majority of the employees participate.

"2. A study of the proposed contract wages, bonus, safety provisions, seniority rules and methods of handling grievances specified in the proposed contract are no more favorable than those now enjoyed by you.

"3. Both parties to a contract should be responsible. Republic is held by law responsible for acts of its officials. C. I. O. does not assume the same kind and measure of responsibility.

"4. The policy of Republic Steel Corporation is that NO EMPLOYEE HAS TO JOIN A UNION TO GET OR HOLD A JOB. Although the proposed agreement by its language does not disclose the ultimate objective of a closed shop, C. I. O. organizers have stated that the signing of the Carnegie-Illinois agreement 'will result in the complete unionization of the entire industry.' Republic does not believe in the closed shop principle.

"5. The signing of a C. I. O. union contract would be unfair to the workers who do not favor the Union as their collective bargaining agency and to those who prefer to deal for themselves individually with the Company. Coercion would be used by the Union in an attempt to force these workers into the Union against their wishes causing them to surrender, for all practical purposes, their rights to deal with the Company except through the C. I. O. on such vital questions as wages, hours, and working conditions.

"6. Such a step would disturb the present harmonious relations with our men and break down the mutual confidence which has existed in collective bargaining matters between the workers and management.

"7. The signing of C. I. O. contracts in other industries has not resulted in industrial peace. Notwithstanding signed agreements, sit-down strikes and other interruptions of work have occurred in the automotive and other industries.

"The policy of this company has been, and is now that it is willing to meet with any one to bargain with him for whomsoever he represents.

"Republic believes that every employee is entitled to determine for himself, free from discrimination, in-

terference, restraint, coercion and intimidation by anyone, whom he wishes to represent him in the matter of collective bargaining. In view of the foregoing facts and because of the Wagner Act and recent decisions of the United States Supreme Court, Republic Steel Corporation sees no necessity for signing the C. I. O. contract.

"The Company is willing to bargain collectively with its employees as in the past. MEMBERSHIP OR NON MEMBERSHIP IN ANY ORGANIZATION IS NOT A REQUIREMENT OF EMPLOYMENT."

On the night of the conference, the Association held a mass meeting in the Main Office Auditorium of the Massillon Works. Employees on duty during this time were paid their regular wages by the respondent for attending, and a total of approximately 2,000 were present. Nick Linckenhely, the principal speaker, addressed the meeting over a loud speaker system; his main topic was "that the Employees Representation Plan had been so good, so successful in cooperating with the employees in the company in getting the present wage increases . . . that the C. I. O. was not a fit organization to belong to, that if the Republic Steel was forced to recognize the C. I. O., they would have to close down the plant, on account of the high cost of operation, and that being an old mill, Massillon would be without the Republic Steel."

Despite the respondent's pressure upon its employees to force them into the Association, however, that organization, on its own estimate, was never able to obtain more than 1,100 applications for membership out of over 3,000 employees. As a method of organizing opposition to the union the Association was a failure.

The respondent, therefore, resorted to a more direct method of attack. On May 20 it shut down all the mills in

the Massillon Works, with the exception of the blooming mill, and locked out almost all its employees. The respondent contends that the shutdown and lock-out were not aimed at the union, but were caused by an emergency in the main turbo-generator unit which generates power for the use of the mills. T. J. Ess, a combustion engineer employed by the respondent, testified that at about 7 p. m. on the night of May 20 he received a call from the plant that there was trouble with the turbo-generator unit, that he went to the power house, saw the machine vibrating very badly, and after consultation decided that it was necessary to shut down certain units of the plant. At 10:45 p. m. power was switched off from all the mills of any consequence in the Massillon Works, except the blooming mill, and the mills remained shut for 3 days until May 23.

On cross-examination, however, Ess admitted that the respondent maintained a connection in the plant with the power service of the Ohio Public Service Company in order to take care of such a breakdown, and that power to run the mills could have been obtained from that company without even pulling a switch. It is therefore apparent that even if there was a breakdown in the turbo-generator unit, there was no emergency which compelled the respondent to shut down its mills.

On the other hand, the respondent had repeatedly threatened to close down the plant before it would grant recognition to the union. From November 1936 until a few days before the shut-down, in conversations, interviews, and meetings, Alvin Smith and Andrew Evans, superintendents in the sheet mill, and foreman David Lewis, had drummed into the ears of the employees that recognition of the C. I. O. would mean a shut-down of the plant. The chief selling point of the Association, as reiterated by the Employee Representatives to all comers, was—Join the Asso-

ciation or else—if Republic is forced to recognize the C. I. O., it will close down the plant.

Quite apart from these repeated threats and warnings, the uncontradicted testimony of Joe Morton, president of New Deal Lodge No. 1124, reveals the respondent's motive for the shut-down. On May 21 or 22 Morton met foreman Lewis on Main street in Massillon:

> "Mr. Lewis said, 'I guess you will have enough of this strike when the company gets done with you.' I said, 'What do you mean "when the company gets done with me?" ' He says, 'When we get through starving you out.' 'Why,' he said 'you won't want to strike.' "

In the light of these facts and the respondent's failure to show any convincing business reason for its conduct, we are compelled to conclude that the respondent shut down its mills and locked out its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the union. The respondent thereby discriminated against its employees in regard to hire and tenure of employment and interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

To consider the lockout, however, as merely one more instance of the respondent's hostility toward the union would be to ignore the circumstances under which it occurred and the history of which it was a part. After the exchange of telegrams on May 6 and the breakdown of negotiations on May 11 between the S. W. O. C. and the respondent, the situation in Massillon was rife with unrest. At this critical time, the respondent saw fit to carry into execution its repeated threats to close the plant if the C. I. O. asked for recognition. In the long history of the respondent's campaign to crush the union, this was the final blow. Under these circumstances, the union could not hope

to preserve itself without immediate resort to action. At 11 p. m. on the night of May 25, pickets surrounded the plant and the strike began.

The respondent's activities after the lockout leave no doubt that it expected the strike and made preparations to meet it. On the morning of May 25, Carl Myers, acting District Manager of the Canton and Massillon Works called on Stanley W. Switter, Massillon's Chief of Police, told Switter that "they expected a strike at almost any time in the near future and wanted to know how the Police Department was able to handle the situation . . . how we stood and how many men we had . . ." Later in the day, James A. Lewis, Service Manager of the Alloy Steel Division of the respondent, who had been in Detroit, Michigan, was informed by his office "that there was considerable talk about a strike taking effect that night" and made arrangements to get back as quickly as possible by flying from Detroit to Akron, arriving in Massillon at about 8 p. m. C. W. Cravens, one of the respondent's salesmen, who remained in the District Office with 85 other employees, including three cooks and seven telephone operators from May 25, for 15 days and 16 nights, testified that he came back from Akron to go into the office because he had heard rumors that there was going to be a strike, and that on the night of May 25 there were a number of cots in the District Office and a food supply "more than enough for 15 days and 16 nights." Several foremen and employees who remained in the Massillon Works after the strike was called also testified that they slept on cots which were already there, or which were delivered to the plant on the night of May 25.

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4. *The Strike*

Between May 25 and July 1, when Governor Davey ordered the Ohio National Guard into Massillon, the Mass-

illon Works and the plant of the Union Drawn Steel Company remained closed. During this period, in preparation for the reopening of the plants, the respondent was engaged in a campaign to conscript the Massillon police department to break the strike.

Certain obstacles appeared to block the easy accomplishment of this objective. The Massillon police department was small and poorly equipped for the respondent's purposes. Of a total of 18 regular police, only 13 were available for strike duty and the department lacked a supply of tear and vomiting gas and other equipment considered essential to break a strike. Furthermore, all the city officials—Mayor Krier, City Solicitor Hardman, Chief of Police Switter, and the City Council—were insistent not only that the city could not afford to hire special police or buy extra equipment, but that the Massillon police must remain neutral and would not be used to break the picket lines. Finally, a large body of public opinion in Massillon supported both the strikers' cause and the attitude of the city officials.

The respondent began systematically to mobilize its forces and seek its allies to overcome these obstacles.

On May 26, the first day of the strike, a committee of six employees, met at Linckenhely's home and formed a Back-to-Work Committee. The members of this committee were either officers or Employee Representatives under the Plan and the Association.[20] During the strike other Employee Representatives and at least two foremen—Paul Rider, foreman in the billet shop, and "Chic" Immell, fore-

20. Nick Linckenhely, chairman of the General Body of Employee Representatives under the Plan and president of the Association; N. C. Brown, secretary of the General Body of Employee Representatives under the Plan and secretary of the Association; Paul Hoffman, Employee Representative under the Plan and treasurer of the Association; Henry Gonder, Sam Schilling, Don Burkhart, identified by Linckenhely as Employee Representatives under the Plan and the Association.

man in the blooming mill—joined the committee and took an active part in its work. Thus the Back-to-Work movement was organized by the very employees through whom the respondent had maintained its control over the Plan and the Association, and assisted by the respondent's foremen.

On May 27 or 28, the Board of Directors of the Massillon Chamber of Commerce organized a temporary committee composed of businessmen and citizens of Massillon with the announced purpose of acting as a clearing house for information with regard to the various phases of the strike situation as it affected the business community in Massillon. This committee later developed into a broader organization which came to be known as the Citizen's Committee, the Citizen's League, the Labor Relations Committee, or more commonly, the Law and Order League of Massillon. Its most active members were D. W. Case, secretary of the Massillon Chamber of Commerce, Jonathan Lester, president of the Massillon Rubber Company, and Glen Lanham, manager of the Erie Chevrolet Sales Company.

These two organizations formed the spearhead of the respondent's attack. For the first two or three weeks of the strike, as workingmen demanding only the right to work and as citizens interested in preserving law and order, they presented to the public an unimpeachable front. Thereafter, behind this front, the respondent proceeded to manipulate these groups for its own purposes.

On June 9, Glen Lanham of the Law and Order League went to Chief Switter's office with the message that Carl Myers and Gordon Hess, the respondent's assistant sales manager, wanted to see Switter in Canton. City Solicitor Hardman, Switter and Lanham then drove to the Hotel Onesto in Canton where Myers was confined to his room as a result of having been shot by one of his company guards.

Myers immediately launched into an attack upon the Chief and the city officials. "He wanted to know what the hell was going on over there; were we going to allow the hoodlums to run things and why they cut the telephone wires and why the hell we didn't take action such as the Chicago police did and put them where they belonged . . . they knew how to handle the situation, if we did not,[21] and if we didn't wake up, we wouldn't need what police force we had, we wouldn't need a chief of police and we wouldn't need a city solicitor and we wouldn't even have a first class post office; that Massillon would be a junction if that mill shut down, which it looked as if it would with the wires cut and they would have to evacuate the office . . ." Chief Switter replied that he had only 18 men and that "it was not our job (anyway), that we wasn't a strikebreaking outfit, and, furthermore, the mill was down in the country out of the city limits."

Hardman testified with regard to Myers' remarks as follows:

> "Mr. Myers began asking what the people of Massillon were doing about the strike, what the police department was able to do, and what the businessmen were doing about it, whether or not they were interested in keeping the steel plant there. And he went on to say that if the steel plant moved out that they would not need a chief of police and they would not need a mayor and would not need a city solicitor . . . Mr.

21. Myers was referring to the incident which occurred on May 30, 1937, in the vicinity of the respondent's plant in Chicago, Illinois, when the Chicago police dispersed a crowd of strikers and sympathizers, ten of whom were killed. See *The Chicago Memorial Day Incident*, Report (No. 46, Part 2) of the Committee on Education and Labor of the United States Senate, pursuant to S. Res. 266 (74th Congress), which makes the following findings with regard to this incident:

"We conclude that the consequences of the Memorial Day encounter were clearly avoidable by the police. The action of the responsible authorities in setting the seal of their approval upon the conduct of the police not only fails to place responsibility where responsibility properly belongs but will invite the repetition of similar incidents in the future."

Myers pointed out what a fine job the Chicago police had done."

At Myers' request, Switter agreed to remove certain records and evacuate from the main office certain employees who had remained there since May 26. In the course of this discussion, Myers stated that there were some arms and ammunition in the main office, which could be locked up in the vault, but "they wouldn't do anybody any good there." He proposed, instead, to give them to Switter as a start toward some equipment to help the police department "in any situation which might arise." Upon Switter's acceptance of this offer, Myers dictated a letter to Raleigh France, Chief Deputy Sheriff of Stark County, authorizing France, who was in charge of the main office, to turn the arms and ammunitions over to the Chief. "If you are going to turn this office over to Mr. Switter's protection," asked Lanham, "and moving out in the entirety, does that mean you are never going to open up this office in Massillon again and the plant in Massillon." "I did not say that" replied Myers, "I said that when enough men want to work in Massillon, we will open."

At 4 o'clock that afternoon, Switter placed the arms and ammunition with the office records in the trunk of a car, drove through the picket lines and delivered the trunk load to the respondent's agents. The arms and ammunition were not turned over to the Chief until later that evening. At 8 p. m., shortly after dark, pursuant to arrangements made with France, Switter drove to the Brookside Country Club, four miles north of Massillon, where Frank and Lieutenant Adler of the respondent's police force, under cover of darkness, transferred to Switter three shot guns, six combination shells, three gas guns, and about 90 gas projectiles.[22]

22. On June 1, 1937, Federal Laboratories, Pittsburgh, Pennsylvania, manufacturers of tear and vomiting gas, had shipped to the Union Drawn Steel Company at Massillon the following material:

The respondent's first objective was accomplished: The Massillon police department was now adequately equipped.

On June 11, Carl Myers again summoned the city officials to the Hotel Onesto in Canton, to discuss the question of supplying food to 16 guards and 4 maintenance men that had remained in the plant. Myers told the city officials and Raleigh France, whom Myers had invited to sit in at the conference, that "they had about four or five days supply of food in the plant, that it was up to Switter and Frank to get food into the men, that the maintenance men were keeping the coke ovens hot, that if that battery of coke ovens was ruined it would be goodbye for Massillon, that they wouldn't ever start that plant again." Switter promised to see what he could do about getting the food into the plant.

On the following day Myers called Switter on the telephone and angrily protested against an arrangement, to which Switter had agreed, by which one Marshall, a company official, was to enter the plant, accompanied by two pickets, to inspect certain insurance and relief records. Af-

3 1½" cal. shot guns	@	$60.00	$180.
30 1½" cal. long range projectiles C. N. (tear gas)	@	7.50	225.
90 1½ cal. long range projectiles D. M. (vomiting gas)	@	8.00	720.
12 1½" cal. short range cartridges D. M.	@	6.00	72.
40 Grenades, Jumbo Triple Chaser D. M. 116 M	@	13.00	520.
35 Grenades, Jumbo Spedeheat D. M. 113 M.	@	12.00	420.
1 Type "GB" gas mask			25.50
Total			2159.50
Less 10% on item No. 1		18.00	
Less 20% on items 2-3-4-5-6		391.40	
			409.40
			1750.10
10% excise tax on items 1-2-3 and 4			97.56
			1847.66

(Exhibit 1343-P, p. 5021, Volume 14, Hearings before the Subcommittee of the Committee on Education and Labor United States Senate, Seventy-fifth Congress, first session, pursuant to S. Res. 266).

ter this telephone conversation, Switter informed D. W. Case that Myers was agitated by the refusal of the Union to permit Marshall to enter the plant without an escort of pickets. Case offered to have J. Lester of the Law and Order League telephone Myers and "stall him off for a few days until we know what we are going to do." Case then communicated with Lester, who telephoned to Canton and reported that Myers had "consented to give him (Switter) two or three days to get himself into position, he wanted to put himself (Myers) in shape to really take charge."

On the following afternoon, June 13, at Case's request, Switter attended a meeting of the Law and Order League at the Chamber of Commerce. Switter was asked whether, if the money was raised, he would be willing to add the required number of police and purchase the extra equipment. Switter replied that he would not agree to this without the Mayor, but that if the Law and Order League would hold a further meeting, he would see to it that the Mayor was present. Switter testified, "They wanted to know how much it would cost to put on these police and how many we would need in order to maintain law and order and so on and how much equipment. They argued why the Mayor would not appoint the police and we threshed around for a couple of hours there and talked about the Monroe situation. . . . Monroe, Michigan . . . They said they done a good job up there; they smashed the picket lines up there and they deputized enough police to do it . . . that turned out to be the main topic of conversation."

On the next morning, Mayor Krier, Switter, Hardman, and Snyder, the safety director of Massillon, attended the meeting of the Law and Order League at the Chamber of Commerce. Switter testified, "They put the heat on the Mayor about appointing some special police . . . they wanted to know why he would not appoint more police . . . and he argued that the city was broke and did not have the

money to do it. And this group said they could raise the money . . . $8000 to pay for 50 policemen for two weeks and the equipment considered necessary for the department . . . and finally he agreed to appoint them (but) if he took on the 50 police that not one of them would go to the picket line . . . (This) they did not like . . . so well." After this meeting the League, which had raised approximately $1200, returned the money to the businessmen who had donated it.

Later that afternoon, Mayor Krier, Hardman, and Switter called on Myers at the Hotel Onesto in Canton and informed him that they could not get the food into the plant. Switter was the spokesman: "We told him we wasn't going to, that we wasn't bringing any food down to them or to the pickets, either . . . because we figured it was not our job; it was over in the county and it was not up to us to get food down to them. We decided we wasn't going to have nothing to do with it . . . And then he (Myers) lit on us and told us that it was a funny thing that a little town like Monroe could build up a police department big enough to get their mill operating again and control the situation and it was damn funny we couldn't do something. . . . He said that Massillon would be a prairie and it wouldn't need a mayor or safety director or any of us . . . he said he would take care of it himself that he wouldn't let those people starve." Hardman's testimony confirms and amplifies that of Switter: "We talked about what it meant to Massillon, if Massillon would lose that plant, and there was danger of its being lost . . . he said that if the plant was lost, the people of Massillon and the officials would be responsible for losing it and he thought they were not taking any interest in it and in seeing that the plant was reopened." With this, the conference ended.

On June 15, the respondent issued and distributed to its employees a statement signed by Tom M. Girdler which,

after reciting that many of its plants were reopening, added:

> "Movements similar to that which resulted in opening the Monroe plant are spreading rapidly in other affected communities. Employees kept from their jobs by mobs of armed pickets many of whom have never worked for Republic and citizens outraged by this defiance of law and decency by the C. I. O. are joining together to insist that law enforcement agencies compel the union to cease unlawful picketing.
>
> * * * * * *
>
> So, when you get all through, the present controversy sums up somewhat like this:
>
> [Blackface type] Must Republic and its men submit to the communistic dictates and terrorism of the C. I. O.?
>
> [Blackface type] If America is to remain a free country the answer is NO."

After this statement, the Back-to-Work movement, which had hitherto been relatively inactive, began its work in earnest. At first, Linckenhely testified, the Employee Representatives, assisted by foremen Paul Rider and Chic Immell, merely circulated petitions from house to house, asking their fellow employees to return to work; then began "the big move." On June 20 Linckenhely and the other Employee Representatives called on the members of the Law and Order League at the Chamber of Commerce for their assistance, and "they all talked about the Back-to-Work movement and how to find a way and means of trying to get the men back to work." On the following day, June 21, led by Linckenhely, Fred Becker, a metallurgist in the employ of the respondent, and foremen Rider and Immell, a crowd of approximately 300 men appeared at City Hall. "They stormed the City Hall," testified Switter,

". . . they demanded a meeting with the Mayor and I . . . they was all up in the air about wanting to go back to work and wanting me to give them protection . . . they demanded to know why I refused to accept this several thousand dollars that . . . the Law and Order League promised to raise . . . for the special police." A committee, with Linckenhely and Rider as spokesmen, then met in the Safety Director's office with the Mayor, Switter and Hardman. Switter urged the committee not to rush matters or to become so excited. He told them the money which the Law and Order League had promised had never been raised, and stated, in answer to their further questions, that he would refuse to accept it if it were raised again because he "was not going to take on a gang of men to go down and break the picket lines," and that the picket lines were around the entrances to the plant beyond the jurisdiction of the city.

After similar remarks by the Mayor and Hardman, the city officials upon the demand of the committee addressed the rest of the group waiting in the lobby of City Hall. Switter told them "to hold themselves a few days to give the Mediation Board at Cleveland . . . appointed by the President of the United States . . . a chance to do something before they started any back-to-work movement, and I told them then and there that I wasn't going to take any fifty greenhorn men and go down to the picket line under no consideration.[23] The Mayor also referred to the President's Mediation Board, called upon the members of the group not to be hasty and stated that they were foolish to get excited, that the plants would probably open within a few days, and that there was no use in going down to the picket lines and having a battle and losing more time than they would lose by waiting. "Gentlemen", he said, "remember if we start such things it won't be one-sided,—

23. See *Report of the Federal Steel Mediation Board to Secretary of Labor Frances Perkins.*

there will be bloodshed on both sides. Be patient a few days. . . . We don't want any trouble or bloodshed down there."

On the afternoon of the meeting with the Back-to-Work Committee, the city officials drove to Canton to see Colonel Lawler, observer for the National Guard in the Massillon district, and, after discussing conditions in Canton, told him of the demands of the Law and Order League and the Back-to-Work movement and requested him to come to Massillon to observe the situation there. Lawler replied that he himself and other National Guard observers had been to Massillon and ridden around the picket lines and that from his observations, Massillon was in fine condition, everything was pretty peaceful, as peaceful as could be expected under strike conditions. Lawler and the city officials then discussed the activities of the pickets in carrying sticks and clubs, piling stones, and blocking roads. Lawler dismissed these activities as "technical" and stated that it would be impossible to argue over every little technical point of the law when an emergency such as a strike situation arose. He ended by complimenting the city officials very highly on the way in which they had been handling the situation, and stated that they had it well in hand.

The city officials then returned to Massillon to attend a meeting of the City Council, where Switter presented a request for additional police, on the ground that he was using some men in the strike zone that were needed in the city. The City Council rejected the request. "They was kind of cold on it," Switter testified. "We went into a meeting in the City Solicitor's office after the Council . . . a committee meeting. They told me not to get hot and bothered about it, it was down in the county, and it was up to the sheriff." "They immediately jumped us," Hardman added, "about not having the funds to spend, and they said there was no reason for the Chief to get all excited

about it; to begin with the plant was in the county and it was up to the sheriff to do something about it."

Following the conference at City Hall on June 21, the Back-to-Work movement held a meeting, with about 450 present, at Willowdale, on June 22, and another meeting at Sippo Park with about 700 present, on June 23. Foremen Rider and Immell donated the use of their automobiles to assist Linckenhely and the other Employee Representatives and to transport employees to these meetings. At the Willowdale meeting, Linckenhely testified, Rider addressed the crowd and "talked in regards to the way they were kept out of the plant and that so many men came to him; wanted to know if anything could be done about getting back to work . . . and spoke along the line (of) making arrangements to go back to work." At the Sippo Park meeting, Rider spoke "in regards to the same line of work . . . of trying to urge the men along that wanted to get back to work."

On the same day that Linckenhely had discussed "ways and means" at the Chamber of Commerce, the Law and Order League had retained Elson Wefler and Franklin Maier as its attorneys. On June 25 these two attorneys, with Case, Lester, and other members of the League, came to City Hall and presented to the city officials a petition signed by a number of civic organizations and leading citizens of Massillon. After the petition was read aloud, Maier delivered a speech about the breakdown of law and order, demanded that the city appoint special police, citing its statutory authority to borrow money from banks for that purpose in an emergency, and accused the city officials of refusing to accept the money which the Law and Order League had raised. Maier also stated that Massillon was losing a pay roll of $40,000 a day and that "he had it straight that if something wasn't done the Republic was going to move their plant out of Massillon."

Switter retorted that there had been no breakdown in law enforcement, that he had received a number of "cock and bull statements, the same as they did . . . of fellows being afraid to go home and being in fights, and being beaten up" but that only a few persons had signed affidavits and filed complaints, and that in every one of these cases an arrest had been made.[24] Switter further denied that the Law and Order League had ever raised any money for special police and called upon Case, who confirmed the Chief's statement. When Hardman spoke, he deprecated the whole petition as "a grandstand play," defied the Law and Order League to prove its assertion that dynamite was being transported through the streets, and denied that the general safety of the city was in peril. Hardman added that the reference in Maier's speech to the loss by Massillon of $40,000 a day "smoked the situation out" and showed that the League was interested, not in law and order, but in protecting the businessmen.

Finally, Switter and Mayor Krier agreed to appoint some more men as special police and the Law and Order League agreed to assist them to borrow money for this purpose from banks in Massillon.

After the meeting, Switter, Case, and Hardman conducted two officers of the Ohio National Guard on a tour of the city to assist them in finding suitable quarters for the troops, if they were called in. The officers inspected a number of possible sites and finally selected an old lodging house owned by the city, which Case agreed to equip with refrigeration, gas, plumbing, and water connections, if it became necessary. Subsequently, such equipment was added, and the Chamber of Commerce received a bill for the cost, which at the time of the hearing it had not paid.

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24. Switter testified that there had been fewer arrests during the strike than in normal times.

At about five-thirty that afternoon, Gordon Hess, the respondent's assistant sales manager, telephoned Switter at Switter's home that he had received information from the respondent's Canton office that between five and ten thousand Akron rubber workers and "Canton C. I. O.'s" were on their way to invade Massillon, and demanded to know what the Chief was going to do. After insisting that "it sounded like more bull we had heard about other invasions," Switter finally agreed to call out the police department. Hess stated that he "would have his gang over there to back (the Chief) up."

When Switter arrived at City Hall, he found a crowd of approximately 200, including foreman Rider of the Back-to-Work movement and a number of the respondent's employees. Rider asked Switter to put in a three alarm signal for the American Legion. When Switter disclaimed any such authority Rider went to the fire chief, who sounded the signal. The crowd in the meantime was steadily growing, until it reached a total of several thousand persons in a high state of excitement. At 7 o'clock, when Hardman arrived, "the atmosphere was very tense . . . so tense that I did not park my car in the business district but drove it out into the residential district so that if there was any trouble the car would not be damaged."

In the Chief's office, a crowd, including Hess, Rider, and J. Lester of the Law and Order League, had congregated. Lester asked the Chief if he wanted him to go home and get a shot gun. Hess "grabbed the telephone and called up the Canton office of the Republic Steel Company and wanted them to send somebody over to see the enthusiasm that Massillon was showing and what a crowd was backing up the Massillon gang to go back to work." After the call, Hess informed Switter that men from Republic Steel had already been over to see the crowd. Nevertheless Hess procured a newspaper reporter to take pictures of the

crowd, telling Switter and Hardman that "it would be great to have a picture showing the enthusiasm of the group . . . so they could show the Republic Steel there was still some interest in Massillon and some life there . . . showing the Republic Company (that) Massillon wanted the steel mill there."

At about 10 o'clock the two National Guard officers who had been in Massillon earlier in the day came to City Hall and wanted to know the reason for such a crowd. When Switter informed them that a mass invasion of Massillon was threatened, they replied that their intelligence division could find no trace of any mass movement on Massillon and "for God's sake to break up that crowd before something happened." Switter then addressed the crowd, thanking them for being willing to back him up on any invasion on the city, and asked them to disperse. Several members of the American Legion approached Switter and Hardman after the meeting and wanted to know why and on whose authority they had been called out, and stated that they did not want to get mixed up in any strike controversy.

On June 27 or 28 Chief Switter asked the Civil Service Commission to certify to him a list of men eligible for appointment as special police. Of the seven certified, Switter chose six, rejecting the seventh because he was a former employee of the respondent, and choosing four other men of neutral feelings. The Massillon police force now had reached a total of 28.

On June 29 the Back-to-Work Committee, through the assistance of Case, obtained the use of a room on the ground floor of the Union Bank Building as a place where they could set up tables and register the number of employees who wished to return to work. On the following day the Back-to-Work movement began registration. When crowds formed and the police interfered, dispersing them,

Linckenhely, Rider, and Case called upon Switter in protest. Case especially urged upon the Chief that a large majority of men, not concerned with the strike, wanted to put themselves on record as desiring to go back to work, "so that there could be some definite assurance given the Republic that if Republic wanted to open the plant, that it could be opened, there was men enough to operate." Switter informed them that he had no objection to their registering employees, but stated that he did not think it was a good idea to use the ground floor. Case then offered the Back-to-Work Committee the use of the offices and facilities of the Chamber of Commerce on the eighth floor of the Ohio Merchants Bank Building, where registration continued from June 30 until July 3. Two full-page advertisements were published in the *Massillon Independent*, over the name of the Back-to-Work Committee, announcing the place and purpose of its work. By July 3, the respondent claimed, over 2200 employees had signed the above-described petitions.

This was "the big move" for which the Back-to-Work movement claimed credit. Linckenhely testified, however, that the Law and Order League had agreed to pay for $75,000 worth of insurance which was to have been taken out to cover property damage to the Union Bank Building; that the League had paid for the mimeographing of the petitions; that the League had furnished without charge all the desks and facilities for the registration of employees; and that the League had paid approximately $100 for the advertisements of the Back-to-Work Movement in the *Massillon Independent*, although by agreement between the *Independent* and the Law and Order League, nothing in the advertisements indicated that they had been paid for by the League.

Although the question of whether the Back-to-Work movement represented a majority of the employees of the

respondent's Massillon Works is not in issue in this proceeding, it is worth noting that among the alleged 2200 signatures are those of a large number of foremen, superintendents, and office workers, together with the signatures of several individuals who signed the same petition as often as four times. Furthermore, the record is plain that supervisory officials of the respondent directly participated in circulating and obtaining signatures to this petition. Thus William Morris, a millwright leader, testified that his general foreman, one Shoemaker, telephoned him to go to the Chamber of Commerce and sign the Back-to-Work petition. Judson Moody testified that his foreman, Ray Henry, called at his house and asked him whether he had signed the Back-to-Work petition. Wilbur Larker, an office employee, testified that he signed the Back-to-Work petition while working in the temporary offices of the respondent in Canton, and that he saw other employees sign the petition there. Nick Linckenhely testified in detail concerning the activities of foremen Rider and Immell as members of the Back-to-Work committee. Switter testified that Gordon Hess referred to the Back-to-Work movement as his "gang" and sent them en masse to City Hall to back up the Chief on the fictitious invasion of Massillon.

Thus from beginning to end, the "big move" of the Back-to-Work Committee was in reality conducted from behind the scenes by the respondent and the Law and Order League. Like the discredited Employees Representative Association, of which it was merely a continuation, the Back-to-Work Committee was the creature of the respondent.

In the meantime on the night of July 1, Governor Davey had ordered General Marlin and four companies of the Ohio National Guard into Massillon. Despite previous arrangements to house the troops in the city lodging house, two companies were quartered in the main office of the

Massillon Works and the other two in a school house overlooking the respondent's plant.

On July 2 the Massillon Works and the plant of the Union Drawn Steel Company reopened. On the same morning, at the request of Creighton, general manager of the Union Drawn Steel Company, Switter supplied city police in two cruising cars to escort the Company guards and a quantity of arms, ammunition, and tear and vomiting gas, into the plant. One of the Company guards furnished Officer Moore with a few gas candles or jumpers, which were kept in the police cruiser car. Though the plants were open, the strike was still effective. The respondent was preparing for the day when arms and ammunition would be needed.

On July 2, 3, and 4, and thereafter upon the solicitation of superintendents and foremen, who telephoned to the men and visited them at their homes, a number of employees returned to work. Although the record does not indicate the exact number of this group,[25] it is evident that, even under the guns of the National Guard, in the fifth week of the strike, despite the campaign of the Law and Order League and the Back-to-Work Committee, and despite the continued solicitation of foremen and superintendents, a large number of men preferred not to return to work but to remain on strike.

On July 5 General Marlin called a meeting of the city officials, told them that the troops were not going to be there forever, and stated that if they wanted the steel mill in Massillon, they would have to be prepared to take over the situation when the troops left. The Massillon Works, he warned them, was the last plant to reopen, and if they did not keep it open they would lose it. Marlin suggested

25. There is some testimony that approximately 2000 employees returned to work. It is not clear whether this figure included the employees of the Union Drawn Steel Company.

deputizing and arming a group of men from the respondent's plant to be known as "home guards" who on their own time would patrol their respective precincts after work. No definite plan, however, was agreed upon at this meeting.

On the next afternoon a delegation from the Law and Order League, the Back-to-Work Committee, and the respondent called upon the city officials at City Hall to urge upon the Chief the necessity of appointing special police and home guards. The composition of this delegation reveals the close relationship between the organizations. Among those present were R. E. Peppard, superintendent of the billet shops, Perry Angstadt, the respondent's chief accountant, and one Blantz. These three men had been Company Representatives under the Plan. Case and Quigley were present on behalf of the Law and Order League. In addition there was also present Fred Becker, the metallurgist who had been a member of the Back-to-Work Committee since its inception. According to the testimony of Case, however, Becker, together with Peppard and Angstadt, represented the respondent.

Representatives of all three organizations joined in the discussion. Peppard, Angstadt, and Becker asked the Chief to select men from a list of names of 66 of the respondent's employees, which they submitted, to be appointed as special police to act under Switter's jurisdiction and to be paid by the city. Hardman and Switter examined this list, recognized the names of a number of men they knew, and rejected most of them as being too excitable to act as police officers during the strike emergency.

The delegation then requested that the Chief deputize a group of the respondent's employees as home guards and Peppard offered to furnish a further list of names. To this proposal both Switter and Hardman objected, as Case tes-

tified, on the ground that "it was probably undesirable to use anybody connected with Republic although they were men connected with the Back-to-Work movement. . . . Hardman said if they did anything like that they should put some C. I. O. men on." The delegation argued that Canton had deputized the respondent's employees as home guards and that Massillon should follow suit. To prove this, Angstadt telephoned the respondent's office in Canton and then informed the city officials that "the city solicitor of Canton was down in the plant then swearing them in." Hardman and Switter, nevertheless, refused to accede to the delegation's request.

At this point there appears, most casually, upon the scene the principal character in the tragedy of bloodshed and violence that was to be enacted on the night of July 11. "During the meeting," testified Case, "Switter made the statement . . . of his inability to get any policemen who were competent and I made the suggestion to him . . . 'How do you stand with Captain Curley or Major Curley?' He said 'All right.' 'Well,' I said, 'I understand from one or two talks I had with Major Curley that there is a method by which you could get the type of people and kind of people that you want and that perhaps he would advise with you on the method.' And he says, 'Where is Major Curley?' "

The testimony is in conflict as to whether Switter then sent for Curley, or whether Curley had already interviewed Switter earlier in the day without any previous communication from Switter. There is no dispute, however, as to the fact that Case suggested Curley to the Chief as the man who would solve the problem of increasing the Massillon police department, or that on July 6 Curley called upon Chief Switter and offered his assistance in helping to secure men for the police force.

Case described Curley as a disinterested, public-spirited citizen, "a former Army officer . . . who had organized two companies in Massillon . . . for the world war, a very competent man along the lines of developing organization, also, a very influential member of the . . . American Legion." To this description of himself, Curley added that he had served in the Spanish American War as a private, in the World War as a captain and major, and was now retired with the rank of major. A disingenuous witness, whose testimony in many respects is contradicted by the testimony of other witnesses both for the Board and the respondent, and whose account of many of the events in which he participated is inherently improbable, he nevertheless furnished testimony which is indispensable to an understanding of the case.

On the evening of July 6 General Marlin, who had attended a meeting on the previous evening of the Law and Order League at J. Lester's home, called on Chief Switter. "He wanted to know why we were backing down and why we had not shown some signs of life in getting this group of . . . mill men they (Peppard, Angstadt, and Becker) certified to me . . . sworn in and getting ready to take over." Switter replied that he was "trying to get neutral men . . . and it was slow picking." "This is no time to pick up neutral men," Marlin answered, "you have to be ready to take this situation over. . . . I demand you have some plan to certify to me by tomorrow noon so I can report to the Governor." When Switter failed to agree with this, the General left in a huff.

Finally, on the following morning, the leading spirits in the Law and Order League descended upon the city officials. "They demanded we do something about this situation . . . why we had been passing the buck and why we refused to take the special police. They just climbed all over us and demanded some action be taken and threat-

ened to impeach us, talked about getting rid of the Mayor. They talked about geting rid of the city solicitor and everybody else, and they wanted something done, wanted some action. . . . (They) said we could get plenty of men there . . . Republic Steel men . . . and I told them that I didn't want those men, that if I was going to have any special police, I wanted to have men on neutral sides that had no argument in the strike."

"Q. (by Mr. Hunt) What was the reply?

A. They said the steel mill was at stake, the City of Massillon was at stake, as far as industry goes, and we would lose the biggest of our industry.

Q. Did they ask you at this meeting if you would accept the assistance of Captain Curley in picking men to add to your police force?

A. Yes they said they knew where to get men and he could help pick the men.

Q. Did you finally agree to take the men right away?

A. No, it got pretty hot in there for the next hour or so.

Q. What do you mean it got pretty hot?

A. Why they were climbing on us to take on these men and wanting a showdown and wanting to know why and fighting with us and asking all kinds of things and saying all kinds of things against us, why we had done the way we did . . . and why we would not consent to it.

Q. Chief Switter, I have asked you so far merely a few questions about isolated meetings and conversations in the strike situation but weren't you subject to constant pressure throughout the day and night . . .?

A. I did, I worked sixteen, eighteen and twenty hours a day ever since the strike broke, and one time none of the department went home for four days and

nights, four nights, only excepting a few hours sleep in the cruising car and I slept on the office floor and the whole department the same way, even the new rookies.

Q. So you were pretty tired at the meeting of this Law and Order Committee on July 7th?

A. We were pretty well pounded down by that time.

Q. By whom?

A. The law and order and the back-to-work movement.

* * * * * * *

Q. What did you finally tell the group that you would do about putting on these extra police?

A. I told them that was up to the Mayor and the chief executive of the city to make that decision and they got after the old boy pretty hot and he kind of weakened for the time being and asked me again what we should do. Then they jumped on me and I told them I would give them the works, I would give them what they wanted, I would appoint the whole damn outfit, give them all the guns they wanted and let them go to it, it is coming, and God damn let them have it . . .

Q. You could see what was coming?

A. That there was going to be a battle and bloodshed all around as soon as they put guns in those rookies' hands and we had been fighting against bloodshed all the time."

With this agreement reached, the Law and Order League invited the city officials to attend a luncheon that noon to which Case, at Curley's request, had also invited a score of the managers of Massillon's leading industries. Case opened the business of the meeting by announcing that Major Curley had been designated by the Mayor and Chief

Switter to make a statement to them about some cooperation that the city very badly needed at that time. Curley then addressed the meeting. He stated that he had consented to render such assistance as he could to the city for the purpose of developing a special police force, totalling 66 men, which would restore law and order in Massillon; that there were a number of men employed in industries who were not connected with the strike, whom he felt would make good special policemen; and that if any of those present had any available men, "we would like to have them sent to us immediately." After this a discussion arose about home guards. Curley stated that he "did not believe that was the need in Massillon, he believed that what they wanted was some special police here for the purpose, who would be deputized and be under the direction of the Chief."

The last speaker was Carl Myers. "He lit on the Mayor and the city solicitor and I," testified Switter, "with all fours . . . He said he had not thought a hell of a lot of us until now and he thought we was beginning to get on the right track now and go along and do something." "He was glad to see the Mayor and Chief had wakened up . . . ," testified Hardman, "he roasted them pretty heavily . . . he felt they had not been doing their duty . . . He said he loved Massillon and loved the Republic Steel Corporation . . . He dwelt on the fact that the Mayor and Chief had not enforced the law, that they had been asleep and not doing their duty." "The only thing I ever recall," added Case, upon cross-examination, "that Mr. Myers said at that meeting was somebody in the meeting insisted on the necessity of home guards, Mr. Myers made the statement that he felt the whole matter could be safely left with Major Curley, if he didn't need home guards, that was all up to him, *the whole situation could rest with him, he felt.*"[26]

26. Italics supplied.

After this meeting, the Law and Order League, its work accomplished, took no further part in the events in Massillon. We pause for a moment at this point to re-examine the role of the Law and Order League and the respondent's relations to it.

Almost from the beginning of the strike, the respondent had made it clear to the businessmen and officials of Massillon that the retention of the Massillon Works, and the very existence of Massillon, depended directly upon their success in breaking the strike. Thus on June 9 Carl Myers had asked Lanham what the businessmen were doing about the strike, whether or not they were interested in keeping the steel plant there, and had threatened Lanham and the city officials that unless Massillon furnished the same kind of protection the Chicago police had furnished, the respondent would move out, and Massillon would be a junction, without even a first class post office.[27] On June 25, the day the Law and Order League presented its petition to the city officials at City Hall, Franklin Maier, attorney for the League, informed Hardman that he "had it straight" that unless something was done, the Republic was going to move their plant out of Massillon. At the conference with Chief Switter on the morning of July 7, the members of the League had urged in desperation that the steel mill was at stake, the City of Massillon was at stake, and that the business community would lose its biggest industry. The record is replete with testimony that Carl Myers, on numerous occasions, had stated to the city officials that if they did not get the mills open, Massillon would be "a prairie in the junction of route 21 and route 30," that if the plant were lost, the people of Massillon and the city officials would be responsible for losing it, that without the mills, Massillon would need neither a Mayor nor

27. On or about June 9 Lanham, Poe, and other members of the League also telephoned to Myers when they heard that "they were going to close up the mill, they were not going to open it up."

a Chief of Police nor a City Solicitor. General Marlin, who had been in communication with the members of the League and whose troops were quartered in the respondent's main office, pointedly informed the city officials that it was not the proper time to select neutral men as special police, that if they wanted the steel mill in Massillon, they would have to be prepared to take over the situation when the troops left and that if they did not keep the mill open they would lose it.

Under this threat of economic disaster, the Law and Order League, while publicly maintaining that its purpose was to establish law and order, privately set to work with all its power to assist the respondent to break the strike and to reopen the plants. When on June 15, the respondent, over the signature of Girdler, issued its statement that "movements similar to that which resulted in the opening of the Monroe plant are spreading rapidly to other affected communities," the respondent supplied the League with its program and its propaganda.

We have noted above how the Law and Order League assisted and subsidized the Back-to-Work Committee in many of its activities. Becker, Linckenhely and other members of that Committee conferred daily with Lester at his home and with Case at the Chamber of Commerce with regard to "the big move." So great was the League's anxiety to retain in Massillon the respondent's pay roll of $40,000 a day, that its members contributed within a few days $1200 toward a fund of $8200 to be raised to pay for special police and police equipment. Its concern for the establishment of law and order may be measured by the fact that the $1200 was returned to the members when it was learned that the city officials would not use the special police to break the picket lines. Lester and Lanham frequently acted as go-betweens between Myers and the city officials. Before the National Guard arrived, Case undertook the

expense involved in extensive alterations of the municipal lodging house. When the National Guard was preparing to leave, the members of the League resorted to threats of impeachment against the city officials unless they agreed to hire the respondent's employees as special police.

Not the least of the League's functions was to assist the respondent in whipping up public opinion against the strikers and the Union by spreading unfounded statements that the C. I. O. was marching to invade Massillon, that explosives were being transported about the city, and that the strikers had instituted a reign of terror, in which the city authorities were powerless.

Finally, Case and other members of the League, together with the respondent, were successful in having Major Curley, allegedly a disinterested public spirited citizen of Massillon, placed in a position of authority in the Massillon police department, with results which are described below. In sum, what the respondent was unwilling or unable to do openly, it accomplished in part through the businessmen of Massillon, acting under the guise of establishing law and order. Under the stimulus of the respondent's threats to abandon its Massillon plant the League became the respondent's accomplice.

At 3 o'clock on the afternoon of July 7, a crowd of 60 or 70 men appeared at police headquarters, a good many of whom Switter recognized as employees of the respondent. Curley and Switter lined the men up and at Curley's suggestion all those under 30 years of age and all married men with families were asked to step forward. After these were dismissed, a further selection was made from the remainder, and 40 men were finally chosen as special police officers. Before the men were sworn in, Switter testified, there was a slight delay. "The bondsman did not show up and Curley had to contact Gordon Hess and he told him to ar-

range for getting the bondsmen to come over from Canton to bond the group of men . . . that is who Captain Curley said he was talking to, wanted to speed them up so they could swear them in."

In the light of subsequent events, the method by which these special police officers were bonded deserves careful examination. On July 5, Thomas R. Smith, a member of the insurance firm of Duerr, Smith, Lane Company of Canton, received a telephone call from Kenneth Cope, an attorney whose firm represented the respondent in this and other proceedings, to come to the respondent's offices in Canton and sign some bonds for special policemen. At first Smith refused on the ground that he was forbidden to sign such bonds during a strike, unless the respondent were willing to indemnify the Fidelity and Casualty Company of New York, the bonding company which Smith represented. Later Cope stated that the indemnity agreement could be arranged, and, accompanied by Assistant City Solicitor McCarroll of Canton, Smith drove to the Canton plant of the respondent. There W. C. Gubbins, the respondent's assistant treasurer, and Speis, its chief clerk, were engaged in selecting the men to be bonded from a group of employees. After certain employees had been dismissed as being "too hot-headed," the remainder, 56 in number, signed application forms and Smith signed, sealed, and executed public official bonds upon which the names of the employees had already been typed. Each bond bound the employee as principal, and the Fidelity and Casualty Company of New York as surety, to the City of Canton in the penal sum of $500, and was conditioned upon the faithful performance of duty by the employee as private police officer of the City of Canton. On the back of each signed application form, Gubbins wrote "Republic Steel Corporation by W. C. Gubbins, assistant treasurer," and agreed that the respondent would indemnify the Fidelity Com-

pany for any loss that company might sustain as a result of having acted as surety on the bonds. Assistant City Solicitor McCarroll then swore in the respondent's 56 employees as private police officers of the City of Canton. Of these 56, at least two were Employee Representatives, and two were supervisory officials at the Canton Works.

On the afternoon of July 7, Attorney David Day, of counsel for the respondent, telephoned Duerr, Smith, Lane Company and asked Smith to go to Massillon to sign more special police bonds. Day, Gubbins, and Smith then drove to City Hall in Massillon, where Day inquired of the desk sergeant in the police department for Captain Curley. Curley took the group to Switter's office and introduced them to the Chief who greeted them curtly, and sent them to another room where the men whom Curley had selected were awaiting to be bonded. Smith testified that none of the men were rejected, as they had been in Canton, and that the final selection had been made before they came to him. Hardman, Gubbins, and Curley, sitting at a table, assisted Smith in executing the bonds. Gubbins, who had been handed a list, apparently by Curley, of the men to be bonded, inquired of each applicant whether he was an employee of the respondent and, if so, his badge number. Hardman then administered the oath of office to the entire group as special police officers of the City of Massillon.

Under date of July 6, Smith forwarded to the respondent an itemized bill for $830, covering special police bonds, at a premium of $10 each, issued for 56 Canton employees and 27 Massillon employees of the respondent.[28] On July 13, Gubbins, for the respondent, signed a contract of indemnity whereby the respondent, as indemnitor, agreed inter

28. Smith testified that the bonding of the police occurred in Canton on July 5 and in Massillon on July 6. All other witnesses fixed the date of the bonding in Massillon as July 7.

alia to become surety for the Fidelity Company on both sets of public official bonds.

Of the 27 Massillon employees thus bonded by the respondent, one William F. Henderson, was a foreman, and another, Maurice Schnierly, was an Employee Representative at Canton. In addition to these 27, 13 other men were appointed, making a total of 40 special police officers. Of the 40, the names of 19 had been submitted to the Chief by Peppard, Becker, and Angstadt on the morning of July 7; 24 had signed the Back-to-Work petition; and at least 32 were employees of the respondent.

From these facts it seems clear that Curley knew in advance the employees whom the respondent wished selected as special police officers and that in their selection he acted as the respondent's agent. Curley, however, denied that anybody connected with the respondent had anything to do with his activities, and denied that he knew the names of the 60 or 70 men who came to City Hall on July 7, or what plants they came from or whether they were employees of the respondent. Curley also denied that he knew that bonds were issued for the Massillon employees who were sworn in, or that he had telephoned Gordon Hoss to arrange for the bondsmen to come from Canton, but admitted that he had spoken to J. Lester about it. These denials are not convincing. On the morning of July 7, the Law and Order League had demanded and the city officials had agreed that the respondent's employees would be appointed as special policemen, and Curley was in constant touch with Case and other members of the League. At the luncheon meeting of the League on July 7, Curley had rejected the proposal that home guards be appointed, and Carl Myers had approved his action, adding, according to the testimony of the respondent's own witness, "the whole matter could be safely left with Major Curley . . . the whole

situation could rest with him." This was tantamount to a ratification of Curley's authority. In addition, before the bonds were signed for the employees in Massillon, Curley either telephoned to Gordon Hess, or spoke to J. Lester about telephoning to the respondent at Canton, in order to hurry the bondsmen to Massillon. Whichever version of this incident we accept, it is apparent that Curley knew, at least after the men had been selected, that they were to be bonded by the respondent. The uncontradicted testimony of Smith, the bonding agent who came to Massillon as a result of a telephone message from the respondent, confirms this conclusion. Smith testified not only that "Curley had mentioned to (Switter) what we came for, to bond the special policemen," but that Curley was sitting in the very room where the men were bonded and where Gubbins was writing down their badge numbers. Furthermore, although in Canton Gubbins had weeded out certain employees before they were bonded, in Massillon he made no such selection and ratified Curley's choice without question. From these and other facts, we conclude that Curley's activities were conducted with the full knowledge and approval of the respondent, that Curley knew in advance and carried out the respondent's wishes, and that the manner in which he selected at least 32 of the respondent's employees of a total of 40 special police was designed to conceal the fact that, while apparently selecting men most suitable for the position, he was in reality choosing men whom the respondent had already designated.[29]

29. Attached to the bill, dated July 6, which Smith sent to the respondent covering special police bonds for 56 employees at Canton and 27 employees at Massillon, was an attached schedule of the names of these employees together with the report numbers of their bonds. With respect to this bill and attached schedule, Smith testified that it was "dated July 6th and it was made in our office at that time, and on the back of this we have attached a list of names arranged alphabetically." The employees named in the schedule were not sworn in until the following day, July 7. This confirms the conclusion that the respondent had chosen the employees to be appointed as special police officers before Curley had lined the men up at City Hall for his "selection." Despite the fact that Smith erroneously described the bonding as

On July 8 and 9, the National Guard moved out of Massillon and the police department, thus augmented, assumed control. Although there were no city funds to purchase equipment, Switter ordered 30 new sidearms and four dozen new night sticks. By Sunday, July 11, all the special police were armed.

"The breakdown of law and order in the city!" observed Switter on the witness stand. "Not one of these new men were put out where these homes were supposed to have had windows broken out of and men taken out and attacked. The whole outfit was concentrated in the strike zone."

At 2 o'clock on the afternoon of July 11, Switter and Curley drove to the Massillon Works to watch the behavior of the pickets when the afternoon shift of workers entered the plant and the morning shift came out. "The afternoon (shift) went along in fine," testified Switter, "no trouble at all." Curley and Switter then drove to a mass meeting of the Union at Oak Knoll Park, observed the conduct of the crowd, and made several trips to the Massillon Works and the plant of the Union Drawn Steel Company to see that the special police officers were at their posts. At about 5 o'clock according to Switter's testimony, Curley remarked, " 'I will go see that the night shift changes . . . you better get away and get some rest and recreation. You been at it too long. It is getting you down.' I said, 'That is fine, thanks old boy. If you will take over, I am gone.' " With this, Switter left Curley, went home to supper, and at 9:30 that evening drove out into the country with some friends for a few beers and lunch. On the same day, in the belief that the city was quiet, Hardman had left Massillon to visit his wife who was away on a vacation.

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having occurred on July 6, we are inclined to consider the bill and attached schedule, which were contemporaneously made, in the regular course of business, as better evidence than oral testimony, given some weeks later.

Nothing was said, testified Switter, about placing Curley in charge of the police department. "Things were quiet and they were having this meeting and it didn't look like anything was going to happen. It didn't look like there was going to be anything. It went off on the afternoon shift all right and we did not figure anything was going to happen that night."

> "Q. (by Mr. Donald Wakefield Smith) Is it fair to say that you didn't regard this as a matter of delegation of authority to Captain Curley? You merely thought nothing would happen and he would be around there?
>
> A. That is right. He was going to see the new rookies went on the post standing in front of C. I O. headquarters and there was a viaduct and a couple of men to be posted under the other end of the viaduct, and a couple of other roads supposed to be blocked so no traffic would come through. And that is the way it was supposed to be handled and he was just going to see the men were on their posts and what he could do. . . ."

Nevertheless, as soon as Switter had left the city, Curley took complete command of the police force, and countermanded all of Switter's previous orders.

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5. *The incident at C. I. O. headquarters*

At approximately 11 o'clock on the night of July 11, three persons received fatal injuries and an undetermined number were injured by gunfire and gas fumes, when special and regular police officers, under the command of Major Curley, dispersed a crowd of strikers and strike sympathizers at C. I. O. headquarters on Cleveland Avenue near the respondent's district office, in the City of

Massillon. All those killed or injured were strikers, strike sympathizers or bystanders. None of the police sustained any injuries.

Witnesses for the Board claimed that Curley in Switter's absence led the special and regular police in a murderous and unprovoked assault on C. I. O. headquarters, pursuant to a plan to destroy the union and break the strike. The respondent sought to show that the strikers had assembled at the C. I. O. headquarters with a preconceived plan to rush the police, enter the mill, and remove the employees who had returned to work. In order to understand the causes of and the responsibility for this encounter, it is necessary first to examine the circumstances immediately prior to its occurrence.

As noted above, as soon as Switter had left the city Curley, without authority, took command of the police department. He testified that at about 9:30 p. m., when he walked over to City Hall, "the boys were getting ready to go on the 10 o'clock shift. They all came in and reported for duty. A lot of rumors flying around there that in the afternoon meeting which they had at Oak Knoll Park and they were going to come down and clean up the Police Department. I said 'Hell, I have heard that so often. . . .'[30] They all came to me—I didn't know—for orders. They said 'What will we take along?' I said 'Hell there ain't anything to take along. . . . There is some gas in back of the Sergeant's desk there. Some gas guns.'" To this elaborate expression of unconcern Curley added, however, that the police officers took "everything we had . . . tear gas . . . five tear gas guns . . . and a submachine gun." Officer William Fellabom, a former machine gunner who served in the World War in the company which Curley or-

30. The Trial Examiner granted a motion by the Board's attorney that this latter remark be stricken from the record. In our view of the evidence, the remark is relevant as showing the unimportance which Curley attached to the rumor. We hereby overrule the ruling of the Trial Examiner.

ganized, testified that at 9:30 p. m., when he reported to the police station, "Curley was in there and as soon as he saw me he says 'Bill, you better take your machine gun along tonight. They expect a lot of trouble so I takes the machine gun and some ammunition there we had and they hustled us right down there.'" From the testimony of other witnesses, it is clear that the police also took the 90 gas projectiles, six combination shells, and other equipment which Lieutenant Adler of the respondent's police and Chief Deputy Sheriff France had transferred to Switter for the police department at the Brookside Country Club on the night of June 9.

Officer Ickes, a witness for the respondent, testified that when he reported for duty at 9:45 p. m., Curley countermanded Switter's order of the previous evening assigning Ickes to the plant of the Union Drawn Steel Company, and ordered Ickes and special officer Kelleher, one of the respondent's employees, to a post on Cleveland Avenue, 50 feet south of C. I. O.'s headquarters. The usual number of police assigned to this post was six. Curley admitted that after 10 p. m. the number was increased to 20, explained that he had countermanded Switter's order with reference to Ickes only because the plant of the Union Drawn Steel Company was not working that night, but denied that he had assigned more than two or three additional police to Cleveland Avenue.[31] From the testimony of other witnesses for the respondent, it is clear that Curley's testimony is not to be credited. Officer Fellabom testified that "before we left the station Curley says 'I will be over there, close to where the line is or close to the C. I. O. headquarters. . . . I want to see you over there. . . . You fellows will have to be stationed over there until things quiet down.'" Officer Kraft testified that Curley had sent

31. Curley's testimony on this point is confused. At times, he appeared to admit having assigned all the additional police to Cleveland Ave.; at one point he claimed that Officer Ickes was "about the only one he assigned."

eight or nine police officers to C. I. O. headquarters that evening in addition to those already assigned. Furthermore, Switter testified that when he returned to Massillon on the next morning, Captain Curley informed him that "he had raised the normal guard which was usually stationed about 50 feet in front of the strike headquarters from six men to 20 men." In view of this testimony, we conclude that Curley, upon his own authority, at approximately 10 p. m. armed the police with all the weapons in the possession of the police department, including the gas donated by the respondent, and ordered the normal guard on Cleveland Avenue near C. I. O. headquarters raised from six to 20 men. Of the 20, the record indicates that at least eight were employees of the respondent, including foreman William Henderson.

As already indicated, Curley, in justification for his having armed the police, offered the rumor that in their afternoon meeting at Oak Knoll Park, the strikers had threatened to "come down and clean up the police department." It is clear that nothing occurred at this meeting to warrant the rumor. Edward Davies, an employee of the First Savings and Loan Company, testified for the respondent that he attended this meeting, that he heard Joe Morton speak, that "Morton made different statements in regard to the men that they should fight on, that they are bound to win the strike . . . that they should be down that night at 11 o'clock on the picket line." On cross-examination, Davies admitted that the meeting was perfectly peaceful, and that the general tenor of Morton's speech was merely such that "if I were . . . on the striking side, (it) would help me to feel I was justified and I wanted to continue . . . out on strike." Moreover, Switter testified that before he left Massillon at 9:30 p. m. on July 11, he had heard no rumors of any kind with regard to threatened activities of the strikers. Finally, even Curley himself attached no im-

portance to the rumor. He admitted that between July 7, when the special police were sworn in, and July 11, before he assigned additional police to Cleveland Avenue, there had been a decrease in the number of arrests and the amount of difficulty, that on the afternoon of July 11, when Switter left Massillon, "everything seemed to be all right," and that on the evening of July 11 he did not expect any trouble. We are therefore unable to believe the explanation offered by Curley for his orders.

At approximately 10 o'clock, the 20 officers reported to their posts at or near Cleveland Avenue. In order to understand the events which took place after their arrival, a brief description of the locality is necessary. C. I. O. headquarters is a rectangular two story wooden frame building, with three front doors and three windows, facing west on Cleveland Avenue. Three steps, each about a foot high, lead up to the front doors. The union occupies the lower floor of the building, and had established a soup kitchen there to feed the pickets. The second story is occupied by the family of Wilbert Coleman, a non-striker who appeared as a witness for the respondent. About 100 yards to the southwest of this building lies the respondent's district or main office. About 350 yards to the southeast, on Oberlin Avenue, there is a viaduct over which a number of employees drive to work. Gate No. 1, the entrance to the sheet division of the respondent's plant, is located on Oberlin Avenue, approximately 175 yards west of the viaduct and about the same distance southeast of C. I. O. headquarters.

Immediately upon their arrival at C. I. O. headquarters, the police, pursuant to Curley's orders, prepared for trouble. Officer Ickes testified that from the time that he arrived on the scene, between 9:45 and 10 p. m., he expected trouble because otherwise "I would not have been sent down there." At that time, he testified, he procured

from the police car a tear gas gun and nine projectiles, loaded the gun, and stationed himself across the street from C. I. O. headquarters. The other special and regular police officers, all armed with police clubs, revolvers, rifles or gas equipment, took posts on Cleveland Avenue, between 50 and 100 feet south of C. I. O. headquarters.

Curley directed Officer Fellabom to station himself, with his submachine gun, directly across the street from C. I. O. headquarters. Officer Fellabom testified:

> "As Curley said *when I took the gun,* he says 'Bill what kind of ammunition have you got in there'. . . . I said 'Nothing but bird shot and paper shells.' He said 'That is right; that is right; use them in there, Bill.' "[32]

> "Q. What time did he tell you that?
>
> A. *Right after I got out of the car when we landed there.*
>
> Q. What time was that?
>
> A. A little after ten; about 10 or 15 minutes after ten.
>
> Q. When did Captain Curley tell you that he expected trouble?
>
> A. At police headquarters.
>
> Q. What time was that?
>
> A. Ten minutes after ten.
>
> Q. What time was that?
>
> A. Ten minutes to 10."

At another point, Fellabom testified:

> "Q. Now when you got there did you see any other officers there?
>
> A. Oh, there was at least 16 or 20 . . . Curley

32. With respect to the ammunition with which the submachine gun was equipped, Curley testified that it always had three magazines of "regular 45 bullets" and three of "45 bird shot . . . a paper shell on the end of it with about nine little shot in them."

. . . told me to get over on the left hand side, kind of southwest of where we stopped.

Q. Where did you go then . . .

A. Over to the left hand side, that would be the west side of the street, up close to this tile building that is right pretty near straight across from C. I. O. headquarters."

It thus appears that at least three quarters of an hour before any shooting or any violence whatsoever occurred at C. I. O. headquarters, Curley directed Fellabom, the former army machine gunner, to take a post directly across from C. I. O. headquarters and to use his submachine gun.

We turn next to a consideration of the number and attitude of the strikers and strike sympathizers who congregated at union headquarters that night.

John Veto, a striker, who during the strike made it a practice to go to C. I. O. headquarters every evening, testified that at 8 p. m. on July 11, "when I reached there, they were playing music and the people were dancing on the street and I danced too, and we had a lot of fun. Then the rain came and a lot of people went into the kitchen and a lot of others were on the other side of the hall . . . the music was playing in there . . . in the hall . . . on the north side. We were talking together and having a lot of fun. Then the rain stopped and all of the people went out again, and the music went out again and the people went on the street just the same as they did before . . . I stood right there on the platform. . . . And on the bottom step there was a guy named Ruttenberg. And I believe Frank Hardesty was there. He was right on the sidewalk, I kept waiting around there and hearing the music. When I turned around on the south side there were 12 police over there. They was talking together. Pretty soon another car came and let three more out. As soon as the three more came,

they all went together and talked together. . . . Then another car came and let three more down. . . . Three more special policemen. The fourth car came down there and it was a Massillon police car. . . . Well, I stood there, you see, and there were two police on the corner of Cleveland and Oberlin Avenue—that is near the plant and they were coming up toward the north where the other police were. They began to spread from this point here (indicating) across the street . . . they lined up."

Frank Hardesty, sub-regional director of the Canton-Massillon area for the S. W. O. C., who arrived at C. I. O. headquarters at approximately 9:45 p. m., testified that at that time there were 50 or 60 pickets at strike headquarters. "I went in the large room where they had to feed the pickets and there was music in there. There were four or five young fellows in there playing music and entertaining the pickets and having a very good time. . . . We went down to a soft drink stand . . . stayed there five or ten minutes, and then we started back. When we came out of the building it immediately started to rain very hard. . . . After it quit raining we came to strike headquarters. And the music and things were going on as usual."

At a few minutes before eleven, continued Hardesty, "the pickets changed their shifts and there were more men there . . . inside and outside the strike headquarters. . . . I suppose there were possibly 125 or 150 men there at that time. . . . I talked to some of the boys again. The music was still going on." Other witnesses for the Board estimated the number at strike headquarters in the vicinity of 11 p. m. as between 175 and 200.

Several witnesses for the respondent confirm and amplify this description. James Adams testified that at 9:30 p. m. he visited Wilbert Coleman, who occupied the rooms above the C. I. O. headquarters. "When I got there," he

stated, "why the men was out in front and one of ther had one of these big bass fiddles and he was playing tha . . . a large crowd was out there. . . . There was nothing- just talking—I didn't pay much attention to it. . . . Then i sprinkled a little bit and they all went inside. . . . I coul hear the stamping and moving about inside." Wilbe Coleman on cross-examination added:

> "Q. (by Mr. Lauter) Now you said somethin about a crowd being up there on Sunday evening. Wa that a customary procedure?
>
> A. Yes on Sundays they gathered around ther and chattered around between themselves; more usua on Sunday evening.
>
> * * * * * *
>
> Q. Until the first shots were fired, everythin was peaceable there?
>
> A. Yes.
>
> Q. Was there anything unusual about the crowd Noisy or anything?
>
> A. They were just talking; you could hear ther talking."

The police, however, sought to picture the crowd as desperate, threatening mob. Thus, Officer Ickes testifie that at about 10 p. m., when he arrived at Cleveland Ave nue, he saw between 300 and 350 people in the vicinity that at approximately 10:30 p. m. some unidentified ma yelled "Let's get the police. Let's get them sons o bitches"; and that he walked down Cleveland Avenue fo a police car to take the men away but that when he re turned the men had gone. Officer Fellabom testified tha C. I. O. headquarters was packed full of men. "I coul hear them saying 'Come on boys, let's go through. W might as well cramp them sons of bitches down. We migh as well die now and get it over with . . . .' And he seeme to be a little intoxicated—a man with a white shirt and

straw hat. Then Curley . . . hollered over to the C. I. O. headquarters—he says 'A couple of you men take this man out of here before he starts to make any trouble.'" According to Fellabom, this incident occurred immediately before the shooting. Curley testified, however, that a group of officers, including Officers Ickes and Fellabom, informed him at approximately 10:50 p. m. that there had been "a couple of drunks" that were getting unruly and ought to be taken away but that they had not seen them for some time.

It appears that all three witnesses have thus described the same incident. On cross-examination Ickes stated that the men were talking in foreign languages, "I could understand that when they said 'Let us get the police' but I couldn't understand the rest much." He added that these words were spoken in English and were the only words he understood. If Ickes' statement is true, then Fellabom's version must be regarded as embroidered. In any event the entire incident was considered so unimportant that neither Kraft nor Kelley, the other officers described as having been present, mentioned it in their testimony, and Curley himself merely referred to the men as a "couple of drunks that were getting unruly and ought to be taken away." All witnesses who testified to the alleged incident are agreed that within a few minutes after its occurrence the men disappeared. As noted above, the men were not identified.

On the other hand, Officer Johnson testified that there were between 250 and 300 people present that night; that 200 people was not an unusual number on nights when dances were held at C. I. O. headquarters; that, although he did not hear any music, the crowd was just moving around as any crowd of 250 people would do; and that he noticed nothing unusual about their appearance. Johnson also admitted that, although he did not see any women and

children present before 11 p. m., he observed three women emerge from C. I. O. headquarters at 11:10 or 11:15. Officer Ickes testified that when he arrived at Cleveland Avenue at 10 p. m. and saw a crowd of approximately 350 people, he noticed women and children among those present and that women and children were among the crowd when the shooting began. Even Officer Fellabom admitted that, except for "a load of drunks" whom Johnson arrested and the remarks of the intoxicated man with the white shirt and straw hat, the crowd was perfectly peaceful.[33]

In addition, the record demonstrates that none of the strikers were armed. None of the police or other witnesses for the respondent claimed to have seen sticks, guns, knives or any other weapon in the crowd during the entire period prior to the encounter. As set forth below, of 165 persons arrested shortly after the encounter, only one, Harry Jones, was found by the police to have had even a pocket knife, and Jones testified that it was a knife which he had been accustomed to carry for 4 or 5 years, and that on the night of July 11 he was unaware of the fact that he had it.

We conclude that the crowd which gathered at C. I. O. headquarters from 8 to 11 p. m. was an unarmed, peaceful assembly, composed in part of women and children, en-

33. Officer Johnson testified that between 10 and 10:20 p. m. he stopped a car containing six men, driving up Cleveland Avenue, and asked the men their business. "They said they were C. I. O. men from Canton . . . going up to the C. I. O. Hall . . . They stepped out of the car and I searched them, searched the car for weapons, but they didn't have any . . . (5) took them down to the police station and signed an affidavit . . . and locked them up in jail." The arrest was occasioned by the fact that a proclamation of the Sheriff of June 25 forbade all persons from entering the vicinity of strike areas except on lawful mission. The testimony is in conflict as to whether the proclamation and an injunction of the same date issued by the Court of Common Pleas of Stark County apply to the City of Massillon, where the above-described incident occurred. There is no testimony whatsoever in the record, except for this passing reference by Fellabom, that the men were drunk. The Trial Examiner ruled that similar testimony given by Curley with respect to the incident of the car from Canton be stricken from the record as having no connection with the issues in the proceeding.

gaged in playing music and dancing and other activities usual to a Sunday night gathering.

At approximately 10:40 p. m., while the police with loaded gas guns and other weapons described above were stationed across the street from C. I. O. headquarters, a collision occurred at the corner of South Erie Street and Oberlin Avenue, a third of a mile distant from Cleveland Avenue. Because of the unreliable and conflicting testimony given by the witnesses for the respondent, the exact circumstances of this collision are not clear from the record. Certain facts, however, are undisputed. It appears that an automobile crashed into an abutment near the viaduct. Almost immediately another car bearing a C. I. O. sticker collided with the first car, with the result that the viaduct was temporarily blocked. The driver of the first car was taken into custody by several officers; the driver of the second car attempted to run away, but some one in the crowd in front of a beer garden located on the northwest corner of Erie Street pointed out the fugitive to Officer Mantasch, who pursued, fired one shot and captured him. Thereafter several unidentified numbers of the crowd threw stones and beer bottles at other cars. Mantasch testified that Officer Schwinger fired "some shots at some guy who threw stones" and that Officer Davenport shot off a riot gun to scare a man hiding under the viaduct. It appears that several shots were fired, all by the police, shortly before 11 p. m.

In 10 or 15 minutes the crowd was dispersed, the cars which had collided were pushed off to one side of the road, and traffic at that corner was resumed. Officer Mantasch took the drivers of the two cars to the city jail and locked them up. The man whom he had pursued gave his name as Flores and said that he belonged to the C. I. O.

Apart from these facts, the record provides no clear picture of what occurred at the viaduct. Thus Officer Man-

tasch on direct examination testified that at 10:15 p. m. when he arrived at the corner of South Erie Street and Oberlin Road, "I wouldn't exaggerate, I would say (there were) around a thousand people around the streets with automobiles" and several hundred gathered in front of the beer garden. On cross-examination, he testified with reference to the size of the crowd:

> "Q. (by Mr. Lauter) You are sure there weren't more than a thousand?
>
> A. Might have been more.
>
> Q. About 1500?
>
> A. Might have been more . . .
>
> Q. Might have been three or four or five thousand?
>
> A. I didn't count them . . .
>
> Q. There is no limit to the amount of people that might have been there?
>
> A. That is right."

Charles Moorhead on direct examination testified for the respondent that between 10:20 and 10:45 before the shots were fired by the police, he saw a large number of people milling around and talking at the east end of the viaduct. The number, however, he estimated as "in the vicinity of 40". Officer Moore, another witness for the respondent estimated the number as 300. Moorhead further testified that he saw a group of 20 or 25 men rush out from between houses near the viaduct and throw stones at 10 or 12 automobiles; that, after this, he saw Harold Rinke, a member of the C. I. O., and heard him say "Come on boys, let's get the other side. We are going to town"; and that about 100 men then followed Rinke in a northerly direction.

On cross-examination, Moorhead radically altered a number of these statements. He admitted that he had seen

three or four cars stoned, instead of 10 or 12, asserted that there were about 100 men throwing stones, but admitted that he had not seen anyone breaking windows or glass on the cars, although he had heard the crash. With respect to Harold Rinke, he testified:

"Q. (by Mr. Lauter) You weren't able to identify any of the hundred men?

A. That is right; only one I saw but I didn't see him throw any stones.

Q. You didn't see Harold Rinke?

A. No, sir.

* * * * * *

Q. The only man you knew was there was Harold Rinke and you didn't see him throw any stones?

A. I didn't see Harold throw any stones."

Moorhead first asserted and then denied, that he knew that the hundred men were members of the C. I. O. and added that there were present a number of the respondent's employees other than the members of the C. I. O. On redirect examination, he stated that he had recognized Harold Rinke sitting in a car. It is apparent that no conclusion can be drawn from the testimony of this witness.

Other witnesses for the respondent throw little, if any, further light upon this incident. In addition to Flores, only two or three members of the C. I. O. were identified by name or otherwise as having been present at the viaduct during this period. There is no evidence whatsoever that these two or three threw stones or committed any acts of violence.

As a consequence, however, of the shots fired by Schwinger, Mantasch, and Davenport, the police on Cleveland Avenue, already instructed by Curley to prepare for trouble, began to grow restless. "It didn't look so good" testified Officer Kelley, "the fracas in the viaduct and the

stones and the two men in the cars on the bridge." Kelley added that he had heard shots from the viaduct, but did not know that the police had done the shooting.

From this description of the incident at the viaduct, we return to a consideration of the events that were occurring in the meantime at C. I. O. headquarters. The nature of these events, which precipitated the fatal encounter, was one of the most controverted questions at the hearing, and even their sequence, as presented by witnesses for the Board and for the respondent, is in considerable conflict. We turn first to the testimony of witnesses for the Board.

All of the witnesses for the Board testify that immediately preceding the encounter an automobile drove up and parked among several other automobiles directly across the street from C. I. O. headquarters. Martin Beckner, vice president of the Canton Lodge of the S. W. O. C., testified that at this time he was standing in the doorway of C. I. O. headquarters and noticed the police "deployed across the street and some spread out and some closer than others, and I noticed there was something unusual about them . . . They all had guns, but up until that time they only had clubs . . . It appeared they were nervous, acting like men expecting something, and from the way they were acting I went into headquarters and asked the president of the Massillon Lodge if that was their usual method of conducting themselves. . . . We decided that these were new men and we had better ask the pickets outside to go home. . . . So the president of the Massillon lodge stepped out to tell these men to go home and when he went out the door, I stepped outside the door and stood on the step and Harold Ruttenberg was standing in the doorway. . . . A car pulled up across the street and two men came out and Bill Henderson . . . a chipper foreman in the Massillon plant . . . and the other policeman came forward toward

the car. I didn't know who the other man was, but they told the drivers to put those damn lights out or they would shoot them out. . . . The car was across the street about 50 feet further down.[34] The man switched out the lights and these two officers started back toward the line of police and someone in the crowd of pickets yelled 'Whoopee' or something . . . and these officers immediately dropped to the ground and someone said 'break them down and let them have it', and the shooting started about fifty feet down from the strike headquarters on the southwest corner." It will be noted that Beckner testified that the shooting began in the immediate vicinity of the parked car whose headlights the police had ordered to be turned out.

Frank Hardesty was also standing on the steps at this time in the midst of a group of 20 or 25 men. He testified that a car drove up on the opposite side of the street. "His car was headed, or his lights were headed toward the mill. . . . What I noticed particularly was that the lights were shining on the policemen down there and I suppose they were more or less frightened being new men. They acted kind of nervous anyway . . . and one of them shouted 'Take the lights off'. . . . I saw the fellow cut his lights off, when they hollered at him. . . . It was only a few seconds after that until one of the policemen hollered 'Let them have it break it down'. I saw one policeman drop down and start shooting."

John Veto testified that about 20 police lined up across Cleveland Avenue "and then a car came up there with their headlights . . . from the north coming south, and they had the lights toward the police there. While the light was flashing, I saw a machine on the other side of the road, the

34. Other testimony in the record indicates that this car, driven by Harry Jones, a striker, was parked approximately 20 feet south of and across the street from C. I. O. headquarters.

police side. . . . Two cops stood up and they went forward and I heard them say 'Shut the lights off'. Well the car shut them lights off . . . and they took a couple of steps backwards and they said 'Let's bust them up boys'. And then they dropped flat." Veto identified one of the advancing policemen as Bill Henderson. "Then a shot came by just where I was standing."

Walter Meyer, a striker, who had driven in his automobile to Canton with his wife and Mr. and Mrs. Wincek to attend a union meeting at Sippo Park, returned to Massillon shortly before 11 p. m. "After we went out in the evenings we always stopped and got a bowl of soup or lunch or something before we turned in for home, but this evening I was broke and Mr. Wincek didn't have much money either and when they mentioned about getting a bowl of soup at C. I. O. headquarters on Cleveland Avenue at Massillon we figured it would be a good place to go and get somethihg to eat before we went home, so we all agreed to do so . . . and we drove down Cleveland Avenue north and pulled right directly across from C. I. O. headquarters and parked."

"Q. (by Mr. Lauter) In the direction of the mill, is that right?

A. The mill is directly south, in my estimation from Cleveland Avenue and the C. I. O. headquarters is on the east side of the street, and I parked directly across the street which is the west side. . . . I noticed there was a fire plug back of me, so I pulled up six or eight feet from it and parked. We were there for some time and quite a few people were standing around there talking and having a good time, and we were discussing whether we wanted to go in and get a bowl of soup or go back home. . . . So while I was discussing that with them, I seen a car coming down Cleveland Avenue and passed our car and pulled in directly ahead

of us and passed the fire plug and parked directly ahead of us.

Q. Was that on the same side of the street you were?

A. The same side of the street, and I judge it was 20 feet between my car and this man's car. The man pulled up and he shut his motor off and I heard the cops holler 'Turn them lights off'. I don't think the man heard the cops when they called the first time. Well, the man was getting out of the car, and he stepped on the pavement and they hollered a second time 'Turn those lights off or we will shoot them off'. So the man reached in and shut them lights off and he started toward the C. I. O. headquarters. . . . Well we sat there with the windows all down and after this man left that car, I turned around toward Mr. and Mrs. Wincek and my wife and asked them the last time what they intended to do, if they wanted to go in and get a bowl of soup or if they wanted to go back home. While they were arguing about it, at that time, I heard the motor start in the car ahead of me and I looked around quick and I seen his bright lights were on, and without warning, there were two shots fired and the shots sounded as though they hit the car ahead of us, and I surmised that they were shooting at the man's lights because they had said before they were going to shoot the lights off and just at that time the shots were fired, it all happened I heard the cops holler 'The God damn hunkies asked for it, let's give it to them'. . . . It was just like a hail storm hit my car, sounded like machine guns and shot guns, it sounded like the fourth of July or something at the lake and I seen all the people just pick up and run and run around corners, anywhere, they could go, and after that why the shooting kind of quieted down."

Harry Jones, a striker, was the driver of the car referred to in the foregoing testimony. He testified that "I drove down and pulled up right across the street from headquarters . . . and parked my machine. My brother-in-law and another young fellow were along. . . ."

"Q. (by Mr. Lauter) When you pulled up in your car where did you stop?

A. Right across the street from headquarters. . . .

Q. Was that in front of the fire hydrant or back of it?

A. It was just in front of it. . . . My brother-in-law said 'Someone hollered to turn the lights off'. I turned off the lights. He said 'You better turn them on dim'.

Q. By the way, are you a little hard of hearing?

A. A little, yes. That is the reason I didn't hear him. But my brother-in-law heard him and he told me. . . . So I got out of the left side of the car and turned them on. And my brother-in-law and the other fellow got out on the right. I suppose I took two steps, far enough to open the door and shut it, and I looked down and seen the policemen. I turned around and got in the car and pulled the dim lights on. When I went to pull the dim they just flickered and I pushed them back . . . (The lights) flickered so I got out of the other side of the car. I reached in and turned the lights off and I stood back from the car. Just as I got back from the car, the shooting started. . . . When they (the police) started to shooting I jumped in a doorway. I stood there for about a second or about a minute, I suppose, until the first volley was over. I got down and went around the corner and faced the police. I waved my hand and I hollered 'For . . . sakes stop shooting until I get my machine out of here'. So I ran back to

the car and started the motor. And then I went to pull on the dim lights and it flickered. As she flickered a shot hit the windshield and glass flew in my face and I ducked."

The police version of the incident of the headlights differs sharply from that of the strikers. Curley testified that the headlight was shot out at 11:15 p. m., approximately 15 minutes after the shooting elsewhere had begun. "The fellow drove up with a car and he flooded all the police officers out there with all of the bright lights and just scattered the lights all over the whole area. And Fellabom says 'Turn out those lights'. The fellow turned out the lights and got right back in and turned them back on again and Fellabom says 'If you don't turn those lights out, I will shoot the damn things out'. The fellow didn't turn them out, so Fellabom just shot one out."

Officer Fellabom was standing on the west side of Cleveland Avenue "pretty near straight across from C. I. O. headquarters". On direct examination he testified:

"Q. (by Mr. Pontius) Something has been said with respect to an automobile that ran up in here. Did you observe it?

A. There was a car coming in there just before the trouble started (the shooting at approximately 11 p. m.) I should judge about maybe five minutes before . . . This car came down in there and whoever was driving it pulled over to the right hand curb and he had his bright lights on. Some one hollered over there to put those lights on and someone else hollered over the C. I. O. headquarters 'Turn them on and keep them on'. Of course, the illumination was pretty bright there for the boys that was on the road there. This young fellow parked his car right along the curb, right near this tile building, and he still had those lights on. Then

he jumped out of the car. Somebody hollered 'Turn them out or we will shoot them out'. So I shot out one of the headlights. After he ran away from the car he left it sit. . . .

Q. Was that before the other trouble occurred that you described?

A. That was before the trouble started.

Q. What instrument did you use to shoot the headlight out?

A. A machine gun."

On cross-examination, however, Fellabom materially changed his story.

"Q. (by Mr. Lauter) Before that (the shooting which occurred at approximately 11 p. m.) you had shot out the lights in the car that was standing in front, is that right?

A. That was *after* I shot toward the door.

Q. What is that?

A. That was after I shot at the door. You see, the car was standing in there with the lights on and the young fellow, whoever it was, he was in the car and left it and then he came back and then he left it for the second time. I think it was some time after the shooting from over the door that the headlight was shot out.

Q. About what time did you shoot the lights out from the car?

A. Oh, that might have been 11:30 along in there.

Q. What time did the man drive up with the car?

* * * * * *

A. Just before 11; around 11 o'clock.

* * * * * *

Q. The lights were shining on the police all that time for 35 minutes?

A. Yes.

Q. You walked over to the car 35 minutes after the lights had been on and told them to turn that off?

A. I told them to turn that off?

Q. Who did?

A. Some one hollered to turn them off. He jumped off the car and left them on and someone hollered, 'You better put them lights out or we will shoot them out'. He jumped in the car and then left the car. That is when the trouble started.

Q. You didn't shoot the lights out then?

A. No, sir.

Q. You waited around 35 minutes before you started to shoot them out?

A. At least 35; 30 or 35."

It will be noted that on cross-examination, Fellabom not only claims to have shot out the headlight after the shooting elsewhere began, but denies Curley's explicit statement that Fellabom commanded the occupant of the car to "turn those lights out or I will shoot the damn things out".

On the other hand Officer Kelley, who was standing with Curley on Cleveland Avenue, testified the headlight was shot out as Curley was advancing up Cleveland Avenue, a few seconds before the general shooting. Officer Johnson testified that he arrived at Cleveland Avenue after the shooting had begun and that no headlights were shot out at 11:35 p. m. or at any time after his arrival.

We are convinced that the testimony of Curley and the testimony of Fellabom on cross-examination, with regard to the time the headlight was shot out, is not to be credited. On the other hand, apart from their testimony with regard to the time, Fellabom and Curley appear to have accurately described the details of the incident. Hardesty, Beckner, and Veto stated that after the police had

shouted to Jones, he turned the headlights off. It is apparent from their testimony, however, that they did not see the headlights turned on again or Fellabom fire his submachine gun at one headlight. From Jones' testimony, it is not clear whether he saw or heard Fellabom shoot out the headlight after he claims to have turned the headlights off. The entire incident occurred within a few seconds, and it must be remembered that Jones was hard of hearing, and Hardesty, Beckner and Veto were, at the time, standing in front of C. I. O. headquarters, where their opportunity to observe the events on the other side of the street was limited.[35] Curley's and Fellabom's testimony that Fellabom fired shots at the headlights because they had not been turned off, is obviously the more reasonable of the two descriptions, since Fellabom would hardly have sought to eliminate a glare which no longer existed. In addition, the testimony of both Curley and Fellabom with regard to the details of this incident is supported by that of Meyer, whom we regard as the most accurate and reliable observer of the events in his immediate vicinity.

From all this testimony we conclude that as Curley and Henderson had advanced approximately 50 feet toward C. I. O. headquarters, Fellabom fired several shots at the headlights of Harry Jones' car, and that immediately thereafter the police opened fire at the strikers.

At the first volley, it appears that the crowd stood incredulous and then fled in utter and bewildered panic. Hardesty was standing on the steps of C. I. O. headquarters. He testified that a few seconds after the headlights went off "I heard someone shout again. 'Break them

35. Fellabom testified that from where he stood on the west side of the street, his view of the doorway of C. I. O. headquarters was blocked except for the top two feet of the doorway, by a tarpaulin-covered truck, standing in front of C. I. O. headquarters. Presumably the view of Hardesty, Beckner, and Veto with respect to the activities of Fellabom on the opposite side of the street was similarly blocked.

up! Let them have it!' And they started to shoot. However I didn't move immediately because not being used to riots and things of that sort, I really thought they were just shooting dummies. I thought it was more or less of a bluff. But it wasn't very long until I found out they were really shooting bullets. . . ."

"Q. (By Mr. Hunt) When you say they were shooting bullets, to whom do you refer?

A. The policemen.

Q. Where were they from C. I. O. headquarters?

A. They were about 50 feet down the street towards the steel plant. I saw a policeman go down like this (illustrating) and start to shoot. At first, I couldn't really believe they were shooting real bullets into a crowd of men like that, until I really heard the bullets flying and the bullets flying off the building. . . .

Mr. Edwin S. Smith: Let me get this straight. Was this crowd of men standing between you and the policemen and you were in back of them?

A. No, I was right in more or less mixed in with the men. There were some of the fellows who were behind me and some of them were in front of me. We started to move up the street. I had not moved far at all until one fellow hollered he had gotten shot in the shoulder and he threw his hand over his shoulder.

Mr. Edwin S. Smith: What did he say?

A. He said 'They got me. I am shot.' There were three or four friends with him and they grabbed hold of him and took him along with them.

Q. Let me understand this. You were running up Cleveland Avenue.

A. We were running up the street from the mill,

up Cleveland Avenue. I had not run very far until I saw another man lying on his face with his hands outstretched, motionless, who had been shot by the policemen and from the way he was lying there, there was no doubt, or I thought he was dead, and I guess it did turn out that he was dead. So we kept running up the street until we found an opening in the fence. After I got there, Martin Beckner and another fellow drove up and on. Beckner was hanging on the running board of the car and he stopped and we got into the car and went back to Canton . . .

Q. Did you on the evening of July 11 at any time see any shooting at C. I. O. headquarters?

A. I did not.

Q. Did you see any persons other than police using any weapons?

A. I did not."

Martin Beckner who was standing on the steps of C. I. O. headquarters, had a similar experience:

"Q. (By Mr. Lauter) Was there shooting by anybody else?

A. Shotguns, machine guns and bullets from these special policemen located south of strike headquarters.

Q. At any time you were on the scene did you see any shooting from C. I. O. headquarters?

A. There was not.

Q. During the entire evening did you see or hear any shooting by any of the C. I. O. men?

A. No sir.

Q. Did you see any shooting by anyone else besides the police?

A. I did not.

Q. Describe what happened after the shooting started.

A. When they started shooting I went around strike headquarters on the north side of the building until I came to a lane running parallel with Cleveland Street . . . and seen some people from Canton in a car with two women and I told them to get the women out . . . because I didn't want to see the women shot . . . I went toward the Massillon headquarters and saw a man lying face down in the street and every once in a while the police were shooting gas shells and I said 'Let's get that fellow out' and we carried him up to the corner of Cleveland Street and McKinley Avenue and a car came up with two men and two women in it (the Meyers and the Winceks) . . . . We stopped the car and put the man in it and a second man had fallen and we picked this man up and he had been hurt in the shoulder . . . and by this time the special police started shooting at us and we started to McKinley Avenue . . . the special policemen were lined up on the west side of the street and some were still coming up Cleveland Avenue shooting gas shells and buck shot and these other policemen lined up across from the strike headquarters and every once in a while you could hear the gas guns and these special police went on up to another street running parallel with Cleveland Street and I seen this car with the Canton people in it and asked them to take Mr. Wilson—that was the name of the man that had been shot, and another car came along and I got on it and we drove back to Canton." Walter Meyer, his wife, and the Winceks were seated in a car outside C. I. O. headquarters.

"Q. (By Mr. Lauter) At the time the shooting started, what did the occupants of your car do?

A. I told them to duck.

Q. Did they duck?

A. Yes I say they ducked . . . after the first volley was over, the people pretty well cleared the street in front of headquarters and it quieted down after the first volley, and . . . just as I raised up there was a tear gas bomb dropped about six feet ahead of my car and right away I hollered at Mr. and Mrs. Wincek to roll them windows up . . . and attempted to start and get away from there and just as I done that the second volley came and the second time I told them to duck and stay ducked and I went down myself and we laid there until the second volley was over and I said to Mr. Wincek 'We have got to get out of here one way or another' so I raised up high enough that I could see out with my left eye, and I put my car in low gear and pulled up about eight feet, and I cut my wheels real short, and the third volley came and I didn't stop and I hit the car back of me and I back up the street all through the third volley and the third volley was over the minute I backed into the alley. I . . . went up the street in high speed . . . pretty near a block and I seen at least a dozen men standing around there. . . . and I seen two men (Beckner and Hardesty) holding one man between them and somebody hollered 'Take this man to the hospital.' . . . I stopped my car and I told my wife and Mr. and Mrs. Wincek to get out on the street in order that we would have room to take these men to the hospital. These two men were holding one man and we loaded this man in the back seat and one man . . . held this wounded man's head . . . . There was the man got on the front seat and he said he got shot in his right shoulder. . . . While we were driving up to the hospital this man lying on the back seat was moaning and suffering terribly. He said 'Boys, I am dying.' I rushed the man up to the hos-

pital at high speed. We put him on the stretcher up and took them up on the second floor on the elevator. I helped lift the man on the bed and pulled his pants off. . . . And I rushed down to my car and beat it right back to where I left my wife and Mr. and Mrs. Wincek. When I got there, my wife and Mr. and Mrs. Wincek were not there. There were some other men standing there at the corner. Mr. Joe Morton picked up a tear gas shell that landed right on the corner there and up along the street. I was standing there looking at that and Mr. Wincek hollered up the street and said 'Hey Walt! I am up here.' So I went in my car and drove on up the street and I picked up my wife and Mr. and Mrs. Wincek.

Q. Do you know that the man you took in your car, who was lying in your back seat, died?

A. Yes. I went up to C. I. O. headquarters . . . the next day and some of the boys . . . told me 'you know that fellow you took to the hospital. . . . Well that fellow died this morning.'

Q. Will you describe the condition of your car after the shooting?

A. . . . The windshield was all shattered from being shot. I don't think there were any rifle shots or machine gun shots hit our car. It was practically all buckshot. It shattered . . . the body over the windshield and the body down along the sides of the windshield and both fenders. The left door window . . . was shattered. . . . I counted ten shots that went through the radiator that landed back of the motor up against the dashboard. . . .

Q. During all of the time that you were there did you see any shots come from C. I. O. headquarters?

A. No, sir; none whatsoever. I didn't see no flashes, and I didn't see no shots, and I didn't see any-

body whatsoever have a gun.

Q. Did you see anybody shooting except the police?

A. No, sir."

Harry Jones testified that after the shooting began, "I laid down between the seat and the gear shift and the brake for maybe a minute or so, until I worked my body up onto the seat and kept my head down. . . . I opened the door and got around on the rear bumper. . . . While standing on the bumper, the gas shells and shots started flying and tears started rolling down my cheeks and I started feeling a little sick in my stomach. I got a foot braced and I made a leap. I ran from door to door until I got to the last building."

"Q. (by Mr. Lauter) Will you describe the condition of your car?

A. There was a bullet hole through the windshield and a lot of buckshot in the windshield, a bullet hole through the right headlight, and the radiator on the inside was all full of holes and the outside where the buckshot hit is dinged and the hood on the left side is all spotted from where the buckshot hit and knocked the paint off."

All the foregoing witnesses have described the tactics of the police as they saw them from outside C. I. O. headquarters. John Veto, retreating from the door into the building, describes a scene of unparalleled horror. He testified that as the two police officers advanced up Cleveland Avenue and said "Let's bust them up, boys" they dropped flat. "Then a shot came by just where I was standing, right on from there near me, and I think there was a tear gas shell, because it hit the building and some pieces came inside the room there. As soon as when I heard that I turned around and went into the hall. And there was a table right

there in the hall. When I was turning to dive under the table I had a sharp feeling right on my leg here. And I laid flat under the table. And I didn't get up to see what it was because if I went from there I could get hit on the head."

. "Q. (by Mr. Lauter) You had been shot?

A. Yes. . . . I was (under) the table laying flat for ten minutes. . . . I heard a man from the outside say 'God! They're not blanks; they're bullets'. . . . Then when I heard that I crawled from the table and I went to the other room. And that room leads into the kitchen. And I went into the kitchen. And there five women and around seven or eight men. . . . We waited there for a little bit and we shut the windows all around us. . . . There was so much tear gas and the women were all choked up. . . . We waited a little bit in the kitchen there for about 15 or 20 minutes, I guess, and a man said 'I will go out and see what happened'.

Q. Why did he say that? Was the shooting still going on?

A. Yes. And I said 'All right. I will go with you'. He was going on from there and I was coming on back. And when he reached the door—

Q. What door?

A. The front door . . . that leads to the street. When he opened the door I saw a deputy sheriff shot at him right away while he was holding the knob of the door and the door was half opened and the deputy sheriff turned around and shot the guy right in the leg. He said 'God! I am hit'. When I heard that 'God, I am hit' I said 'Come on boys let's help these men out'. And two more men came and we helped him. . . .

* * * * * *

And we carried the man into the kitchen and we laid

him on the icebox . . . a low icebox . . . a woman went to get hot water to clean him. And by the time she came, the kitchen was all full of blood. There was blood all over the kitchen there coming from his leg. . . . Then the woman washed him up and we let him go for a little bit. We heard a noise in there and we turned off the lights awhile, but the man he fell from the icebox on to the floor. And then we picked him up again. By the time we picked him up two women went to the door . . . to call for the ambulance. When they got to the door they were shot at twice, because when (they) came back they said 'Gosh, we have been shot at twice'. From that time on nobody went to the door anymore. We all sat behind there in the kitchen. . . . Ther the ambulance came . . . and we helped the men to carry him out on the stretcher. When we carried him out, I said to the women there 'You women might as well get out from there'. Well, they got out. One of them, she crawled from the window . . . then the other one went out the front of the house.

Q. When did they go out the front room?

A. When the ambulance was there because that was the chance they had. Otherwise they would be shot and they couldn't get out.

Q. What did you do?

A. I helped the men put him in the ambulance and I went away too. . . . I went on the sidewalk, and when I reached around 25 feet them police were hollering to 'Come back here! Come back here!' I turned around and I saw them hollering and I stumbled on a man lying on the street there. . . . And I got up and ran away. And I reached the corner of Cleveland and McKinley Avenue there, and there was a bunch of men, I would say ten or eight men. They were talking together about helping the man lying on the street there. . . . When they were near the man, the police

shot and they hit one of those men. . . . Then finally I went up McKinley Avenue. . . . And I saw a lot of police. They were coming from toward McKinley Avenue. And I saw that and I kept going. When I reached the corner of Duncan Street and McKinley Avenue, there was . . . a car of special police and a bunch of men sitting on the ground. They were talking together. When that passed, they shot at those men. I ducked down behind a telephone post there.

Mr. Donald Wakefield Smith: How far was that from C. I. O. headquarters?

A. It was three blocks away from C. I. O. headquarters.

Q. (by Mr. Lauter) Now during all the time you were there, did you see any shooting from C. I. O. headquarters?

A. No.

Q. Did you see any shooting from anyone except the police?

A. Just the police shot."

Wilbert Coleman, the occupant of the second floor, testified for the respondent that the glass windows in the front of the building were smashed, that there were bullet holes inside the building, that tear gas was fired through the two front windows, and that because of the effects of the gas, his wife, his brother-in-law and mother then in his apartment, required treatment at the Republic Steel hospital.

To all of this testimony the respondent replied with a plea, in effect, of self-defense, charging that the police opened fire only after several shots had been fired at the police from somewhere near the vicinity of C. I. O. headquarters.

Before examining the testimony of the witnesses for the respondent it is necessary to recapitulate the sequence of

events immediately prior to the encounter as established up to this point:

(1) Shortly before 11 p. m. Harry Jones parked his car on the west side of Cleveland Avenue, almost directly across the street from C. I. O. headquarters, with its headlights shining on the regular and special police lined up on Cleveland Avenue 50 to 100 feet south of C. I. O. headquarters.

(2) Officer Fellabom armed with a loaded submachine gun was standing on the west side of Cleveland Avenue across the street from C. I. O. headquarters in the immediate vicinity of Jones' car.

(3) At approximately 11 p. m. Major Curley and Special Officer Henderson advanced midway from the line of police toward C. I. O. headquarters.

(4) At the same moment Officer Fellabom fired two or more shots at the headlights of Jones' car.

(5) Almost immediately thereafter the police opened fire at C. I. O. headquarters.

With this summary, we turn to the testimony of the witnesses for the respondent. It is evident that the vital question at issue is the exact source of the shots which the respondent alleges precipitated the shooting by the police. Officer Ickes testified, "Cap Curley lined seven or eight of us, maybe six or seven I don't know, . . . us fellows that had the gas guns, across the road . . . about 100 feet south of C. I. O. hall on Cleveland Avenue. . . . He said he was going over and tell those people to move, that it was late enough, that he was going to have them move off the street . . . break them up. . . . Just as he started over there about halfway between the C. I. O. headquarters up the line, there was *four or five shots came out along in the vicinity of the*

C. I. O. headquarters.[36] Stones started to fly. . . . We started firing. I don't remember whether—I started firing gas shells over against the front end of the building. . . . Well, we started to fire the gas shells, and after we shot some gas into them, they started to disappear somehow. There was still some across the street but not all of them. All of them didn't disappear but most of them did. They ran all over, I guess. . . . A little while later, the Canton police arrived and they drove up through Cleveland Avenue with their armoured car and shot gas—what they needed to clear the street. That is all there was to it."

On cross-examination Ickes added that he saw Special Officer Henderson advance with Curley, that he did not see anyone use a machine gun, and that he heard no other shots fired from the direction of C. I. O. headquarters except the four or five at the beginning, as Curley and Henderson had reached the point halfway up Cleveland Avenue.

Officer Kraft testified that he was standing about 100 feet south of the brick building on the west side of Cleveland Avenue ten yards west of the sidewalk. ". . . they got pretty noisy up there and Curley said something about breaking them up . . . and Curley started up toward . . . the crowd . . . and when he got about 50 feet from the crowd, four or five shots rang out and stones flew, they started shooting from both sides."

"Q. (by Mr. Pontius) Now you saw four or five shots fired. Where did they come from, did you observe?

A. *From the C. I. O. headquarters there some place.*[37]

Q. What if anything did you notice about any automobile coming up there on the street? . . .

36. Italics supplied.
37. Italics supplied.

A. Someone pulled up there with an automobile. He stopped there and turned the headlights on. He had the headlights on the police.

Q. Did that occur before Curley started up the street or after he started up the street?

A. Right about the same time.

Q. Did you hear any talk there with respect to those headlights?

A. I heard some one holler to turn them out. In front of the C. I. O. headquarters, he hollered to turn that light off."

Kraft on cross-examination testified with reference to the four or five shots as follows:

"Q. (by Mr. Lauter) Where did you see the bullets come from?

A. C. I. O. headquarters.

Q. What part of the headquarters?

A. The front part, close to the entrance some place . . . kind of a cement porch in front there.

* * * * * *

Q. Do you mean the sidewalk?

A. Yes, sir.

Q. And that is where the shots came from?

A. Up in there some place.

Q. From the sidewalk, is that right?

A. I can't swear where, right the exact spot where they come from, but they come from in there some place.

Q. I am trying to find out . . . whether you know where they came from or not.

A. I heard them in that direction right in front of the—

Q. Did you hear them or see them?

A. I heard them.

Q. Were you facing the C. I. O. headquarters?

A. I was.

* * * * * *

Q. You didn't see where they came from at all?

A. I didn't see them, I heard the direction they came from."

Kraft also testified that he saw Fellabom earlier in the evening take the submachine out of the police car, and walk across the street, but did not see him shoot at the headlights.

Officer Kelley was among the group of police stationed 100 feet south of C. I. O. headquarters. He testified that "an automobile was driven up and parked on the west side of the street; the driver got out of the car, left the lights burning. They were shining directly down the road and into our face and it was partially blinding us. Someone called for him to turn the lights out and the man had taken oh, possibly three or four steps away from the car and he turned and went back and turned the lights off. And someone called out from the vicinity of C. I. O. headquarters, and he used a string of unprintable words and ordered this man to turn the lights back on and he immediately went back to the car and snapped the lights back on. Then with that Captain Curley started forward . . . to turn the lights off . . . and as he passed me, he told me to cover him. . . . When he got up within, oh, approximately 15 feet of the automobile, why there was a volley of rocks thrown and some one fired *five shots from the revolver in the vicinity of the C. I. O. Hall.*[38] The shots were fired in rapid succession. And with the shots and the stones, the crowd surged forward and I released the tear gas shell about eight or twelve feet over their head. . . ."

On cross-examination, Kelley testified:

"Q. (by Mr. Lauter) You testified about cover-

38. Italics supplied.

ing Major Curley at one point. . . . Will you state when that was?

* * * * * *

A. Well, it was prior to the start of the fight up there, just a minute, or within a few seconds rather.

Q. Was that the time that the headlight was shot out?

A. Yes, sir."

Kelley then retracted his previous statement that Curley had gone forward in order to turn off the headlights.

"Q. He (Curley) said nothing about the lights?

A. Not to me.

Q. When were the lights shut off? Was that before the general shooting started?

A. Yes, sir.

Q. Fellabom shot the lights out of that car before the shooting occurred?

A. *No.* Let me recall about that. *That was before the fracas.*[39]

Q. Don't you know which statement is correct now?

A. The last one.

Q. The first statement was incorrect?

A. Yes, sir; I am sorry."

While this testimony confirms the testimony of witnesses for the Board with regard to the time at which Fellabom shot out the headlight, we are satisfied from the manner in which Kelley answered the questions put by counsel for the Board, and from his testimony on direct examination, that Kelley did not see the shots which were fired by Fellabom at the same moment that Kelley claimed to have heard the five shots fired in rapid succession from the vicinity of C. I. O. headquarters. If Kelley's testimony on

39. Italics supplied

this point is to be credited at all, it indicates that he merely saw the lights from the headlight shut off.

It is evident from the testimony of these three officers that although they all appear to have been facing C. I. O. headquarters at a distance of approximately 100 feet when the four or five shots were fired, they could not fix the source of the shooting any more precisely than "out along in the vicinity of the C. I. O. headquarters", or "from the C. I. O. headquarters there some place" or "from the vicinity of the C. I. O. Hall". None of the three testified that they saw flashes or fire from a gun, and it appears from their further testimony that they merely heard the shots. Moreover, with the possible exception of Kelley, none of the three saw Fellabom, stationed directly across from C. I. O. headquarters, fire his submachine gun at the headlight of Jones' car at approximately the same moment that they claim to have heard the four or five shots from "out along in the vicinity of C. I. O. headquarters". Kelley's testimony, as noted above, merely indicates that he saw the light shut off, but not that he saw Fellabom fire his submachine gun. Although the testimony of these three witnesses establishes the fact that certain shots were fired, it does not indicate that they were fired by the strikers rather than by Fellabom.

We turn next to the testimony of several of the respondent's employees who claim to have seen the firing from C. I. O. headquarters.

Orin Pauli testified that at 11 o'clock he and two fellow employees whose shift ended at that hour, drove up to the respondent's main entrance or gatehouse, on their way out of the plant from work.[40] This entrance is located

40. In his testimony on direct examination Pauli referred to Gate No. 1. A glance at the map (Respondent's Exhibit No. 1) will show that it would be almost impossible for anyone at the No. 1 gatehouse to observe the

about 300 yards from C. I. O. headquarters. Pauli's car was fourth or fifth in line when the first car was stopped at the entrance by Republic Steel Police. "We drove up to the entrance, there they stopped us, they had started to shoot", he testified on direct examination. "You could see the flash of the fire coming out . . . of C. I. O. Hall. . . . I didn't see anything else, but we heard the bullets". On cross-examination, he stated that he was standing or "ducking" behind the car from the time the shooting started until after it was over, and again, that he was standing beside his car when he heard the first shot. Pauli also amplified his description of the shots by stating that he saw the flashing of guns from the front and side windows of C. I. O. headquarters when the shooting first started.

It will be noted that there are two important discrepancies between Pauli's testimony on direct examination and his testimony on cross-examination. If he drove up to the entrance in his automobile and the shooting had already started, as he testified on direct examination, he could not have seen the first shots and could not have been standing behind or beside his automobile, as he testified on cross-examination. On cross-examination, confronted with this conflict, Pauli finally chose to reaffirm his second version.

In any event, we consider his testimony unreliable. Standing approximately 300 yards away, behind four or five other cars, in the darkness of 11 o'clock at night, he claimed to have seen flashes from the front and side windows of C. I. O. headquarters, which not even the closest observer of all the witnesses for the respondent claimed to have seen. It is obvious that even if he did see flashes

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front of C. I. O. headquarters. On redirect examination, Pauli corrected his previous testimony and stated that he meant to refer to Gate No. 2, the main entrance.

from guns, he could not at that distance have distinguished whether they came from Fellabom's machine-gun or from C. I. O. headquarters.

Edward Lustig, a watchman employed by the respondent, testified that at approximately 11 o'clock he was standing at the window on the northeast corner of the respondent's main office building, about 400 feet from C. I. O. headquarters. "There was a man walked up the street toward the C. I. O. and he got part ways up there and I hear some noise and hollering and all at once why there was five shots fired from C. I. O. and this somebody hollered in the back for . . . somebody to come forward and they started to shoot this tear gas."

> "Q. (by Mr. Pontius) Just tell us from where you saw the shots fired as you observed them.
>
> A. Well, right from the C. I. O. building, right from the sidewalk down—there was a man standing as close as I could see from the distance I was away from him, and he fired five straight shots."

It will be noted that Lustig is the first witness for the respondent who claims to have seen any person firing the shots. All other witnesses observed only the flashes or the fire from the gun. On cross-examination, Lustig defined the man's position more closely. "It looked to me just like he was standing on the sidewalk when he fired this gun . . . just about eight or ten feet from the building . . . five shots in rapid succession."

In view of this testimony, more precise with regard to the position of the person who fired, than that of any other witness, the following testimony on cross-examination is significant:

> "Q. (by Mr. Lauter) Is your eyesight pretty good, Mr. Lustig, now?
>
> * * * * * *

A. Pretty fair.

* * * * * *

Q. Can you see what time it is over there now (referring to the clock in the hearing room)?

A. Yes.

Q. What time is it?

A. I think it is 20 minutes after 4.

Mr. Lauter: Let the record show—

The witness: Or three.

Mr. Lauter: —that it is twenty-five minutes after three.

The witness: After three, is it?"

Lustig also admitted that he was "kind of a little deaf, that is my ears" and had considerable difficulty in hearing the questions addressed to him at the hearing. We consider that these admissions render Lustig's testimony unreliable. If, as appears, his eyesight was poor and he was hard of hearing, we doubt that at a distance of 400 feet at 11 o'clock at night he heard someone holler to come forward and saw what no other witness in the immediate vicinity was able to observe—a man standing on the sidewalk eight or ten feet from the C. I. O. headquarters fire five straight shots. At the very least, we believe that under these circumstances Lustig could not have distinguished whether the person firing the five shots in rapid succession was Fellabom with his machine gun across the street from C. I. O. headquarters or some other person among the strikers in front of C. I. O. headquarters.

Frank Swarm, a night watchman employed by the respondent, was standing at the window on the east end of the first floor of the district or main offices, at least 300 feet from C. I. O. headquarters. A few seconds after the 11 o'clock whistle had blown, he testified, he saw the fire from guns, from in front of C. I. O. headquarters, "five shots from the front of headquarters".

"Q. (by Mr. Pontius) Then what next did you see?

A. Well, really leading up to the shooting, there was two men walked up Cleveland Avenue, in front of the headquarters, and they got right up near the headquarters and there was five shots fired. Two men dropped and they started back towards the police department they had strung across Cleveland Avenue. After the fifth shot was fired, the Massillon city police started to shoot tear gas."

After the Canton police arrived, Swarm continued, "there was another volley of firing; shooting started from up in front of the hall again".

On cross-examination, he testified with respect to the first volley of shots:

"Q. (by Mr. Lauter) Where did the shots come from?

A. In front of the C. I. O. headquarters . . . directly in front of the building. . . .

Q. But you don't know whether it was from the doorway or the sidewalk?

A. I wouldn't be positive, no. . . .

Q. But are you sure they didn't come from the steps of the building?

A. No, it wasn't that close."

With respect to the second volley of shots, he testified:

"Q. (by Mr. Lauter) Where did these shots come from?

A. From headquarters all around headquarters . . . right up in front . . . right in front of headquarters.

Q. In the doorway?

A. I couldn't say if it came from the doorway or not.

Q. Would you say it came from the sidewalk?
A. Either the sidewalk or the street."

Officer Ickes and Major Curley testified that the only shots during the entire evening that came from the vicinity of C. I. O. headquarters were the four or five shots at the very beginning, immediately preceding the firing of gas bombs by the police. Officer Johnson, who arrived at Cleveland Avenue shortly after the shooting had begun, testified that he saw no shots fired from C. I. O. headquarters at any time after 11 o'clock. Officer Fellabom testified that the only shooting from C. I. O. headquarters that he saw came from the doorway at 11 o'clock, and that, thereafter, from his position directly across the street from C. I. O. headquarters, he fired several rounds at the upstairs windows of other houses. This testimony by the respondent's witnesses indicates that the second volley came not from C. I. O. headquarters but from Fellabom's submachine gun. As noted above, however, Swarm identified both volleys as having been fired from in front of C. I. O. headquarters. We think it clear that Swarm, standing at the east end of the main office building, was not in a position to distinguish whether the first volley came from Fellabom or from C. I. O. headquarters. The very fact, however, that Swarm identified both volleys as having been fired from the same spot indicates that the first volley, like the second, was fired from Fellabom's submachine gun.

The testimony of two other witnesses for the respondent lends support to this conclusion. Wilbert Coleman, the occupant of the rooms over the C. I. O. headquarters, testified that he heard the shooting but did not hear any shots come from the downstairs of the building. James Adams, a visitor at Coleman's apartment, testified that he saw a man on the west side of Cleveland Avenue on the sidewalk shooting a machine gun, that the first shots that were fired

sounded as if they came from the west, from the street, directly in front of the building.

There remains to consider the testimony of Major Curley and Officer Fellabom who at relatively close range claim to have seen the flashes of the gun as it was fired. Of all the witnesses for the respondent, Fellabom tells the most circumstantial story of the events which followed. At many important points, however, his testimony differs from that of other witnesses both for the Board and for the respondent. He testified that immediately after the intoxicated man with a white shirt and a straw hat gave up his attempt to go through the police line, Curley walked up to the center of the street and shouted to C. I. O. headquarters, " 'A couple of you men take this man out of here before he starts to make trouble.' [41] I noticed this man walked to the doorway in the C. I. O. headquarters while Curley was standing there. Stones started to fly. I saw the fire flying off the bricks there. I saw one of these hand grenades —a gas bomb—I seen them flying off the stones. That gas bomb didn't any more hit the road when the shooting started out of the doorway."

"Q. (by Mr. Pontius) Now from your position could you see any guns from there?

A. I could see the flashes of the shooting. I couldn't see the guns . . . the fire was flying close from the top of the door. Just like someone was standing up and holding a gun and shooting down like that (indicating). I could see this much . . . just like someone was standing in the doorway and a gun held like that (indicating). I could see that much on the truck.

Trial Examiner Lindsay: You mean the gun was held up over his head?

A. Yes it was higher.

41. According to Curley and Ickes, this incident occurred at approximately 10:30 p. m.

Trial Examiner Lindsay: Holding the gun up in the air. The shooting was down?

A. Yes.

Q. (by Mr. Pontius) With respect to this truck, where was the location of this firing?

A. It was right behind the truck.

Q. That is from where you stood?

A. Yes, sir.

Q. Now, could you tell the direction in which these shots were fired?

A. They was coming toward our men. They were standing at an angle.

Q. From the position you were standing in at that time, could you see any part of the doorway, leading into the C. I. O. headquarters?

A. About two feet of it top and down.

Q. Now where in respect to the doorway did you see these flashes?

A. Close to the top.

Q. Were you able to distinguish any person there?

A. No, sir. It was a tarpaulin over this truck. It hid the view of the front. But I could see—all I could see was about two feet around in top of the road.

Q. Could you see the man holding his hand up there . . .

A. All I could see was this firing this fire was flying close to the top of the door.

Q. Now what if anything did you do at that time?

A. I turned the machine gun loose on that shooting out of the door. . . . I shot over in there and then stopped, and then the boys—the rest of them was all shooting in there, shooting gas. They was close to me and it got so noisy you couldn't hear yourself think."

Fellabom then described how he shot out one headlight of Harry Jones' car and explicity testified that he did this just before the above described events took place. Continuing, he testified that he first fired three times at the doorway, then "saw in the upstairs windows was flashes of shooting."

> "Q. By upstairs windows, you mean what?
>
> A. Toward the buildings along the street on the right hand side, on the east side of the road . . ."

On cross-examination, Fellabom stated that he was on the west side of the street across from C. I. O. headquarters, that "the first shot came out of the doorway of C. I. O. headquarters," and that he fired the second shot. As noted above, he then retracted his explicit testimony made on direct examination, that he had shot at the headlight just before shooting at the doorway, and asserted that he had waited approximately 35 minutes before shooting the headlight out. He remained firm in his assertion that there was no shooting other than the gas bomb before the shots came out of C. I. O. headquarters.

> "Q. (by Mr. Lauter) You are absolutely sure that some police officer fired a gas bomb before any shooting from the C. I. O. headquarters.
>
> A. Yes, sir. I saw it flying through the air. That is as true as I said it. . . .
>
> Q. I am asking you whether or not before the gas bomb was fired, the only action of any violent nature was the throwing of stones by some C. I. O. men, is that correct?
>
> A. Yes, sir."

Fellabom also testified that the only shooting that he saw came from the doorway, at approximately 11 o'clock. Later he testified that he saw between 50 and 100 shots

coming from the upstairs windows of the eight or ten buildings on the east side of Cleveland Avenue, and that he fired his machine gun several times at these windows. As noted above, Officer Ickes and Major Curley testified for the respondent that the only shots which they heard or saw from the vicinity of C. I. O. headquarters during the entire evening were the four or five shots *immediately preceding the firing of gas bombs by the police*. Thus Fellabom, whose view of the front of C. I. O. headquarters was almost totally obstructed by the tarpaulin-covered truck, claims to have seen flashes or a first shot fired, from the doorway after a gas bomb was fired, at a time when Ickes and Curley with an unobstructed view testified that all firing had ceased from the vicinity of C. I. O. headquarters. In addition, no witness, except Fellabom, testified that any shots were fired from the doorway. Fellabom's testimony on this point is not only at variance with the testimony of the witnesses for the Board, who testified that no shots were fired from the doorway or any other place in the immediate vicinity of C. I. O. headquarters, but also with the testimony of all the witnesses for the respondent who testified to the first shots. We think the evidence is overwhelming that Fellabom's testimony to the effect that he saw flashes or a first shot from the top two feet of the doorway is not to be credited.

The salient part of Fellabom's testimony, however, relates to his consistent assertion that he saw a gas bomb fired by the police fly through the air and hit the road *before* he saw the "first shot" from the top two feet of the doorway of C. I. O. headquarters. Every other witness for the respondent, without exception, steadfastly asserted that the police fired gas bombs only *after* four or five shots were fired from some place, more or less definitely identified, in the vicinity of C. I. O. headquarters. This difference

between the testimony of Fellabom and every other witness for the respondent is crucial. It indicates the police 100 feet south of C. I. O. headquarters opened fire after hearing the shots fired by Fellabom from his submachine gun in the belief that such shots were fired by the strikers.

Before summarizing the evidence in support of this conclusion, we turn to the testimony of Major Curley.

Curley testified that he was standing 100 feet south of C. I. O. headquarters among a group of special and regular police at 11 o'clock when "the crowd commenced to get larger at C. I. O. Hall and Kelley and Henderson and Fellabom and Ickes and I got our heads together and I said 'Don't you think it would be a pretty good idea to go up and tell those fellows that they will have to abide by the proclamation that was handed down by the Sheriff of Stark County.' . . . So I said 'We do not want to have any trouble here.' I said 'It would be a good idea to break it up.' So Henderson, he started forward, and he turned around and he said 'Come on Cap' and I said 'Hell, I ain't got any business up there. I am not deputized to go up in there.' And he said 'You are deputized now.' He says 'You are going right along up.' I says 'All right, if that is the way you feel about it, I will go up and try to talk to the boys.' So we started forward . . . and I got about 50 feet ahead of where the officers were lined up. . . . I was met with 'You God damn dirty sons of bitches' and bingo out came a bunch of rocks, clubs, stones and bingo five shots one right past my head."

"Q. (by Mr. Day) Who said this about the sons of bitches?

A. The men up around the C. I. O. Hall.

Q. And where did the rocks come from?

A. Around the C. I. O. Hall.

Q. Where did the shots come from?

A. From on the step of the—in front of the front door of the C. I. O. Hall.

Q. How many shots did you see?

A. Five.

Q. Could you give an opinion as to what kind of shots they were, or from what guns they were fired?

A. Yes, an automatic revolver. . . . I immediately dropped to the ground and all hell broke loose . . . the firing started, I was lying on the ground. I don't know, I laid down. The firing then started from both sides and tear gas guns were going. Fellabom was back with a machine gun loaded with bird shot. He started that barking. The gas—that was fired for effect only."

We have already referred to Curley's testimony that Fellabom shot out the headlight of Jones' car, fifteen minutes after the shooting had begun, and found that the overwhelming weight of evidence was to the effect that the shooting occurred at the same moment that Curley and Henderson had reached the half way point in their advance toward C. I. O. headquarters. It will be noted that in the testimony cited above, Curley stated that Fellabom was among the special police 100 feet south of C. I. O. headquarters, at the time Curley began his advance. On cross-examination Curley modified this statement and testified that Fellabom was on the west side, on "the first tile building on Cleveland Avenue." Other evidence in the record indicates that this tile building is almost directly across the street from C. I. O. headquarters. It is therefore, clear that Fellabom was approximately 50 feet to the north west of Curley at the moment the five shots were allegedly fired from C. I. O. headquarters. With respect to these shots, Curley further testified:

"Q. (by Mr. Lauter) During the entire evening of July 11th, do you know how many shots were fired?

A. Five.

Q. How many shots did you see coming out?
A. Five out of the steps.
Q. Did you see some shots other than those five that night?
A. I didn't.
Q. Then a total number of shots you saw coming out of the C. I. O. headquarters was five?
A. That is right."

Upon the reliability of Curley's testimony that five shots were fired from in front of the front door of C. I. O. headquarters depends in large measure the respondent's plea of self defense. Of all the witnesses for the respondent he was the one nearest to C. I. O. headquarters, with a totally unobstructed view of the entrance and the crowd, and had the best opportunity to observe the acts of the strikers. We believe, however, that Curley's testimony on this decisive point is completely unreliable.

As one who purported to act as a public spirited citizen, he had exhibited an active bias in favor of the respondent. As one who in the absence of Chief Switter had assumed command of the police department and with such command the responsibility for the acts of the regular and special police, he had a paramount interest in asserting that the strikers rather than the police were legally and morally liable for an encounter which resulted in the death of three strikers. This paramount interest and active bias run through his entire testimony.

We have already found that Curley's testimony with respect to the selection and bonding of the respondent's employees as special police is not to be credited. Similarly, Curley's testimony that he did not issue the orders which raised the guard at C. I. O. headquarters is flatly contradicted by the testimony of Chief Switter, Officer Kraft and Officer Fellabom, and is not to be credited.

Curley further testified that just before advancing toward C. I. O. headquarters, he was deputized, for the first time, by Special Officer Henderson, in the presence of Officers Kelley and Ickes. Kelley, however, testified that at this time Curley said nothing except that he was going forward. Ickes testified that Curley said nothing, as he began to advance, except that he was going to "break them up." Officer Kraft testified that he was in the line of police at this time and heard Curley say that he was going to break them up. Kraft did not mention any conversation between Henderson and Curley. Henderson was not called as a witness. Under these circumstances, in view of Curley's evident desire to give the color of legality to his actions, we consider his statement that he was deputized by Henderson to be a protective afterthought rather than a statement of fact. We believe that Curley's testimony on this point is not to be credited.

Finally, Curley testified that Fellabom shot out the headlight of Jones' car at 11:15 p. m. after the shooting elsewhere had begun. This testimony was flatly contradicted by a number of witnesses both for the Board and for the respondent. Under the circumstances described above, we found that Curley's testimony on this decisive point was not to be credited.

In view of the complete unreliability of Curley's testimony on such major points, and his obvious bias and interest, we feel justified in refusing to credit his testimony with regard to the source of the five shots.

A number of other witnesses for the respondent testified that they heard shots fired, either at the beginning of the encounter, or during it, but none of these witnesses was able to fix the source of the shooting more precisely than "Cleveland Avenue," or "on the other side of the viaduct" or generally in the location of Cleveland and

Oberlin Avenue. Some testified on direct examination to a number of shots coming from the crowd and on cross-examination admitted that they had not seen the shooting and did not know whether the police or other persons had fired the shots. A second group of witnesses testified that they saw flashes from cornfields, railroad tracks, and other places at some distance from C. I. O. headquarters. Both groups testified that they heard the shots come from all directions or from north to south or from the west to the east. It is obvious that such testimony proves little or nothing, except that there was a great deal of shooting taking place in and around the vicinity of C. I. O. headquarters from the time the encounter started until 11:30 or later. At least 20 police and an undetermined number of deputy sheriffs were engaged in shooting tear gas, guns, revolvers, and a machine gun in all directions on Cleveland Avenue. Other police east of Cleveland Avenue near the viaduct had shot revolvers and riot guns shortly before 11 p. m. The testimony of these witnesses, while indicating the wide extent of the shooting, proves nothing as to its source.

With this description of the incident at C. I. O. headquarters we turn to a concluding analysis and summary of the evidence.

For at least three quarters of an hour prior to the encounter, while an unarmed peaceful group of strikers and strike sympathizers were gathered at C. I. O. headquarters, engaging in their usual Sunday night pursuits of talking, changing pickets, playing music and dancing 20 regular and special police, armed with revolvers, rifles, gas equipment and a submachine gun, were lined up on Cleveland Avenue under instructions from Major Curley to expect trouble. We have analyzed and found without merit Curley's justification for his orders increasing and arming the police, and have examined and rejected the contention by the police that the crowd as a whole was

otherwise than peaceful. Even if we should credit in full the testimony of those officers who claimed to have heard threats against the police by one or two men in the crowd, it is apparent that under the circumstances described such threats were not taken seriously and that the strikers cannot be held responsible for the isolated utterances of one or two unidentified drunken persons who disappeared from the vicinity approximately half an hour before any violence occurred.

Shortly before 11 p. m., when Curley and Henderson, advancing up Cleveland Avenue from the line of police 100 feet south of C. I. O. headquarters, had reached a point midway between the police line and the strikers, Fellabom, standing on the west side of Cleveland Avenue, across from C. I. O. headquarters, fired several shots at the headlight of Harry Jones' car. Upon this point, as we have seen, the testimony is in conflict. We think, however, that the testimony of the witnesses for the Board, corroborated by the testimony of Officers Kraft and Kelley, far outweighs the testimony of Curley, which is unsupported except for the self-contradictory testimony of Fellabom.

Immediately after Fellabom fired his submachine gun, the police opened fire on the strikers. Because of the darkness and the rapid succession of events, no one witness was able to observe more than a segment of this incident and what immediately followed. The whole, therefore, can be understood only by a synthesis of the pertinent testimony of a number of witnesses:

Beckner, standing on the steps of C. I. O. headquarters looking south, saw the shooting begin from a point in the immediate vicinity of Harry Jones' car, parked on the west side of Cleveland Avenue, across from C. I. O. headquarters, just at the moment that Henderson and Curley were approximately midway between the police and the crowd at

headquarters. Beckner, however, did not see Fellabom fire at the headlight. Walter Meyer, whose car was parked directly across from C. I. O. headquarters, behind and slightly north of Harry Jones' car, heard Fellabom fire two shots at the headlights of Jones' car, but did not see Henderson and Curley. Adams, who was in Coleman's apartment on the floor above C. I. O. headquarters, heard the first shots fired from the west side of the street, in front of C. I. O. headquarters, approximately where Fellabom was standing. Swarm on the first floor of the respondent's district office building, saw a first and second volley of shots fired in front of C. I. O. headquarters. As noted above, Fellabom fired a second volley from his position on the west side of Cleveland Avenue across the street from C. I. O. headquarters, after all the alleged firing from C. I. O. headquarters had ceased. Swarm's testimony, therefore, indicates that the first volley, like the second, was fired by Fellabom.

Officers Ickes, Kelley, and Kraft, standing in the line of police 100 feet south of C. I. O. headquarters and facing it, heard four or five shots in rapid succession from "out along in the vicinity of C. I. O. headquarters," but did not see the shots and did not see Fellabom fire his submachine gun. They testify that immediately after hearing the four or five shots, they fired gas projectiles from their gas guns. Swarm testified that after the fifth shot was fired, the police started to shoot tear gas. Fellabom, however, asserted that the police fired gas bombs at the strikers before a first shot was fired from C. I. O. headquarters. Assuming that with relation to the sequence of the four or five shots and the gas bombs, these witnesses are telling the truth, the discrepancy between the testimony of Swarm and the officers south of C. I. O. headquarters and that of Fellabom across the street from the crowd, can only be explained by the fact that Fellabom first fired his sub-

machine at the headlights of Harry Jones' car, that Ickes, Kelley, and Kraft and other police officers, hearing these shots in the vicinity of C. I. O. headquarters, fired their gas guns and other guns at the crowd, and that Fellabom, seeing the gas bombs flying through the air, opened fire with his submachine gun. Thus, all those present, except Fellabom, heard Fellabom's shots as shots from the strikers and Fellabom seeing the police open fire, continued to shoot his submachine gun. We regard Fellabom's contradictory testimony on this point as an attempt to confuse the issue and thereby avoid responsibility for the incident which touched off the encounter.

In view of the fact that witnesses to a sudden shooting are notoriously inaccurate as to certain details, we regard the discrepancy between the number of shots reported by Meyer and those reported by the witness for the respondent as unimportant. Several witnesses for the respondent testified that the shots were fired in rapid succession, thus indicating the probability that the shots came from a machine gun and that any estimate of the number of shots is at best an approximation. Jones' testimony that there was a bullet hole in his right headlight and another through his windshield, while lending support to Meyer's version of the two shots, is inconclusive, since there were a number of other holes in the radiator of Jones' car, and it is obviously impossible to know whether every shot fired from Fellabom's machine gun registered on Jones' car.

Fellabom's testimony that he used only birdshot in the submachine gun is contradicted by the testimony that there was a bullet hole in the right headlight of Jones' car, which Fellabom admitted having shot out with his submachine gun. Moreover, although Curley would not state what ammunition Fellabom used that night, he testified that the usual equipment for the machine gun was three magazines of regular 45 bullets and three of 45 birdshot.

In sum, the testimony of these witnesses with regard to the source, time, and nature of the first shots which provoked the shooting by the police indicates that they were fired by Fellabom standing across the street from C. I. O. headquarters.

Four witnesses for the respondent, however, claim to have seen flashes of shooting or shots from an unidentified person at some other point. With regard to the same four or five shots—and these are the only shots alleged to have been fired from C. I. O. headquarters—Curley claimed to have seen five shots fired from in front of the front steps of C. I. O. headquarters; Pauli claimed to have seen the flashing of guns from the front and side windows of C. I. O. headquarters; Fellabom claimed to have seen a first shot or flashes from a gun fired from the top two feet of the doorway of C. I. O. headquarters; and Lustig claimed to have seen five shots fired by a man standing on the sidewalk eight or ten feet from the building. For reasons already indicated, we believe their testimony is either false or incredible. As against these contradictory assertions, three witnesses for the Board—Beckner, Hardesty, and Veto—who were standing in or near the doorway of C. I. O. headquarters at the time in question, denied that any shots were fired by the strikers from the doorway or any other place in the vicinity of C. I. O. headquarters; and Wilbert Coleman, the occupant of the second floor, testified that he heard no shots from downstairs in the building. We regard it as significant, although not conclusive, that up to the very moment of the encounter, no witness claimed to have seen any person in the crowd of strikers with any weapon, and that after the encounter, the police found no weapons, except Jones' pocket knife, on the person or in the possession of the 165 men arrested.

From the whole record, we find that the police, armed and forwarned by Curley to expect trouble, and made rest-

less by the sound of shooting from the viaduct, opened fire at C. I. O. headquarters immediately after Fellabom fired his submachine gun; that the shots which the police heard and attributed to the strikers were in fact the shots fired by Fellabom; and that no shots were fired by the strikers.

We turn now for a moment to the respondent's contention that the strikers had assembled at C. I. O. headquarters with a preconceived plan to rush the police, enter the mill, and remove the employees who had returned to work. This contention rests largely upon the testimony of Officers Moore and Kraft.

Moore testified that at about 4 p. m. on July 10, while he was on duty with Officer Kraft, and Special Officers Hodge and Henderson, one Mike Rudak emerged from C. I. O. headquarters, approached the car in which the officers were sitting and said, "You officers had better watch, they are coming down and get you. I am a friend of the police." Moore stated that Rudak then walked back to C. I. O. headquarters, spoke to several fellows, and was shoved out into the street, from which Moore picked him up and took him to jail. "You could tell from the way he talked," Moore added, "that he had had a few drinks." Thereafter, Moore told the other officers, "You had better watch out a little bit."

Officer Kraft testified that between 6 and 6:30 p. m. on July 11, while he was on duty with Special Officers Henderson and Kriger, a man called "Humpy" walked out of C. I. O. headquarters, approached the post where the officers were stationed and said, "You better get out . . . big trouble tonight, 11 o'clock. Between 500 and 1000 coming down. They will kill all of the police and go into the mill and get the slabs." "He couldn't say 'scabs'," Kraft testified. "He said 'slabs.' That is all he said to us fellows. He turned around and went back up to C. I. O. headquar-

ters." Kraft also stated that "Humpy" had had a couple of drinks. Kraft further testified that when he reported this incident to Curley, Curley said he would send more men to that post.

Both of these stories are apparently versions of the same incident. We regard them both, if true, as without significance. Apart from the differences in the specific language attributed to Rudak or "Humpy" and the discrepancy in the date and the time of day on which the statements are alleged to have been made, it should be noted that Curley's testimony contains no reference to any such warning as that reported by Kraft, but was limited specifically to rumors which he had received as a result of the meeting of the strikers at Oak Knoll Park, that afternoon. Furthermore, Switter testified that before he left Massillon at 9:30 p. m. on July 11, he had heard no rumors of any kind with regard to any threatened activities by the strikers. If Mike Rudak was arrested on July 10, it is clear that Switter would have been informed of his alleged threats, had they been regarded as sufficiently serious to warrant action; and similarly if "Humpy" had informed three officers between 6 and 6:30 p. m. on July 11 of a plot to kill the police, it is reasonable to suppose that Switter, who at that time was still in charge of the police department, would have been notified or that Curley would have mentioned it in his testimony. Moreover, there is no evidence that any of the regular or special police, except the six regularly assigned there, reported to C. I. O. headquarters that night upon their own initiative as a result of these or any other rumors. As noted above, they were all instructed to report there by Curley; and it is clear that these threats were not the basis for Curley's orders.

Switter testified that upon his return to Massillon Curley had stated that he raised the guard at C. I. O. headquarters "because he got rumors from a source he did not

want to disclose that the pickets were going to crash the line and stop them from going into the mill at the 11 o'clock shift." At the hearing on July 21, 1937, Switter testified that Curley had not yet told him the source of the rumors which caused him to raise the guard. Since Curley testified to no rumors except those which he had received from the Oak Knoll Park meeting, and Switter had heard no rumors at all, we are inclined to believe that this statement to Switter was merely Curley's *ad hoc* explanation to justify the results which followed his countermanding of Switter's orders.

Officer Moore testified that on July 10, one Burke, a former captain of the picket post, in a conversation with Moore and Special Officer Hodge had stated, "They will know who is running this God damn show in 48 hours." Wilbert Coleman, an employee of the respondent, who occupied the second floor of the house in which the Union had established its headquarters, testified that at about 7:15 p. m. on July 11, he saw men whom he could not identify picking in the ground with flashlights and a stick and carrying stones toward the front of the building. Robert Adams, a plasterer, whose son was employed by the respondent, testified that between 6 and 7 p. m. on July 11, he overheard a "red-headed American" tell Mark Turkey, a member of the union, " 'You keep your men out and we'll keep ours out.' . . . I heard Mr. Turkey said 'Well, I will never be out.' He said 'You get yours out.' He said 'We will get ours out.' . . . this American fellow said 'I feel sorry for the colored fellow, but the damn niggers have got it coming to them. If they get killed they will just have to take it'." He testified that shortly after the first shooting was over "a car came up around the corner and stopped and they got out and my neighbor hollered and asked 'What is going on down there?' One fellow says 'They are having hell down there.' He says

'Anybody hurt?' He says 'Yes, we killed two of them damned city cops.' He said 'How do you know.' He said 'We saw them fall.' So this other fellow got out of the car and he walked up to another fellow and says 'You fellows are from Canton. Aren't you?' He said 'Yes.' 'Well you had better get the hell out of here before they get up here' and another fellow . . . said 'Is that thing in the car?' He said 'Yes.' 'Well,' he says, 'You had better get it out of here because they are liable to break through up here at any time.' And the fellow in the car got out and he says 'Did you see Joe?' He said 'No.' 'Well,' he says, 'we ought to find Joe.' They did not call no last names and my daughter was asking me. I says . . . 'Who is that fellow got out of the machine.' She says 'Tony Dimando. That is the only one I know'."[42]

In the light of the events which took place before C. I. O. headquarters, these sensational but vague statements, anonymous rumors, and acts by unidentified persons, freely attributed to the strikers, carry no weight. In the first place, since Burke's statement, the incident described by Coleman, and the remarks of the "red headed American" were not reported to Curley, they cannot be considered as a basis for his orders. In the second place, it is undisputed that the crowd at C. I. O. headquarters made no attempt whatsoever to rush the police, enter the mill, and remove the employees who had returned to work. On the contrary, at the first shots, the strikers fled in panic. With 20 regular and special police already lined up across Cleveland Avenue, armed with every weapon in the possession of the police department, and an undetermined number of deputy sheriffs in the vicinity, ready at a moment's notice to drive up in cars loaded with tear gas, such an attempt by an unarmed crowd of 200 people, including women and children, would obviously have been suicidal. Not only was no

42. Dimando was not further identified.

such attempt ever made, but the president of the Massillon lodge and the vice president of the Canton lodge of the S. W. O. C., noting the ominous attitude of the police, were on the point of telling the crowd to go home, when the police opened fire. In the third place, no police were killed, wounded, or even injured, except by the fumes of their own tear gas. The strikers were the victims, not the aggressors, in an unprovoked attack.

After midnight, as soon as the Canton police in their armored car had cleared the streets of peopie in the vicinity of C. I. O. headquarters, a "mopping up" squad of special police and deputy sheriffs, led by foreman and special police officer William Henderson, broke into rooming houses near Cleveland Avenue occupied by members of the union, arrested 165 men, and, with the assistance of the National Guard, hauled them to jail.

At 2 a. m. on the morning of July 12, John Angelo, a striker who lived on the second floor of a three story rooming house on McKinley Avenue, a block and a half from C. I. O. headquarters, was awakened by a noise which shook the house, "hollering and breaking doors in the building." Two deputy sheriffs entered his room, thrust guns against his chest, hit him with a black jack, and threw him into the hall. Other armed deputy sheriffs roved through the hallways, crying, "Now you rats we have got you," and routed out the other occupants of the house. Fifteen or 20 roomers, most of them barefoot and half clad, including one woman, were taken downstairs and lined up outside the building. Other men from neighboring rooming houses were searched and added to the lineup. Angelo testified that a Special Officer Henderson in the company of several other special police officers, then asked, "How many C. I. O.'s are here and lift up your hands." Half to three-quarters of an hour later, 10 or 12 of these men were loaded into a National Guard truck, taken to the Massillon City Jail and

then to the Canton Jail, where they were photographed and fingerprinted. After 2 days in the Canton Jail, Angelo, with a number of other men, was returned to Massillon, where he signed a waiver of his right to sue the city of Massillon and was released. He testified that when the deputy sheriffs entered his room, they showed him no warrant of arrest.

Christ Conzas, a striker, who occupied another room in the same rooming house, from his window observed the police enter houses on McKinley Avenue and heard doors breaking in his building. A short time later, two officers with guns and a flashlight broke down the door of his room, searched the room, and ordered him downstairs. There, he recognized Bill Henderson, the foreman for whom he had worked in the mill, and entreated Henderson to release him. "You belong to the C. I. O." said Henderson, "and you have to go down." Other men were taken out from other houses "some of them without shoes, some without clothes, some without dresses, some without shirts." Conzas with the others was taken in a National Guard truck to the Massillon Jail, where he remained until Tuesday, July 13, 1937. Conzas was shown no warrant of arrest by the officers who broke down the door to his room.

Mark Turkey, a member of the C. I. O., who lived with his wife and three children in a rooming house on Fourth Street, about three and a half blocks from C. I. O. headquarters, was awakened by his wife at five minutes of three. Half dressed, he went to the kitchen, where several deputy sheriffs, armed with a revolver and a shotgun, who had broken open the house door, asked for his guns and ammunition. When Turkey replied that he had none, they pushed him upstairs, ordered four men who occupied rooms there out of the building, tore up the beds and mattresses as they searched the rooms, broke into a trunk, where

Turkey's son kept a stamp collection, and ordered Turkey downstairs to wait for his "bus." A few moments later Turkey and the four roomers were loaded into a National Guard truck and taken to jail, in Canton, where they were photographed and fingerprinted. Turkey remained in jail at Canton until 4 p. m. Wednesday, July 14, 1937, when he was removed to the Massillon jail and released after signing a waiver. Turkey testified that when the deputy sheriffs broke into his house, they asked him whether he was a member of the C. I. O. but did not show him any warrant of arrest.

A total of about 165 men, all of them apparently members of the Union, were thus arrested and placed in jail. Hardman, who returned to Massillon after the shooting and conducted their examination, testified that none of the 165 had been shown warrants, that all had been arrested at places other than the scene of the riot by special police officers, deputy sheriffs, and National Guardsmen, and that although most of the men had been released from jail by Thursday, about four were still held, at that time, four days after the shooting. He also testified that of the 165, only one (Harry Jones) was charged with carrying any kind of weapon.[43]

We come, finally, to the question of whether the respondent is responsible for the events we have described. From a careful examination of the record, we think that the answer is plain. As early as June 9 Carl Myers, the respondent's Acting District Manager, had attempted to persuade Chief Switter to use violence against the strikers, "to take such action as the Chicago police did and put them where they belonged"; "they knew how to handle the situation if we did not." On that day Myers donated to the Massillon police department the gas and gas equipment

43. As stated above, Jones was carrying a pocket knife.

which was used by the police against the strikers on July 11, for "any situation which might arise." On June 13, after the meeting at the Chamber of Commerce in which the members of the Law and Order League had praised the Monroe police for smashing the picket line at the respondent's plant at Monroe, Michigan, Carl Myers again urged the Massillon city officials to use violence against the strikers: "It was a funny thing that a little town like Monroe could build up a police department big enough to get their mill operating again and control the situation and it was damn funny we couldn't do anything." In a pamphlet issued by the respondent during the strike, entitled "*What the Editors are saying about the Republic Strike—Reprinted by Republic Steel Corporation,*" the respondent set its seal of approval upon the actions of "the Monroe police, and the American Legionnaires and voluntary police who aided them and stand with them."

> "They have performed a healthful public service and they deserve high commendation and support . . . These men have used forceful methods, but no more forceful than necessity demanded . . . They simply are undertaking to uphold American law, order, and individual liberties . . . "

As described above, the respondent through Chief Accountant Angstadt and Superintendent Peppard, the members of the Law and Order League, and the Back-to-Work movement succeeded in exerting such pressure upon the city officials that, against their better judgment, they finally agreed to accept Curley's assistance and swear in as special police officers at least 32 of the respondent's employees, including foreman Henderson. That these special police officers were not disposed to be neutral was a fact generally known in Massillon. Of the 66 candidates which Peppard, Angstadt and Becker had submitted to the city officials on the morning of July 9, 29 had signed the Back-

to-Work petition, as had 19 of the 32 men chosen by Major Curley. With regard to the temper of the members of the Back-to-Work movement, the Reverend Hess, a witness for the respondent, testified, "From my most sober judgment I am positively of the opinion that if we had not had the police there on the night of the riot that we might have had not two men killed but maybe 50 or 100 or more killed . . . My reason is this, contacts that I had had with men, the Back-to-Work men . . . that they were in no temper to stand any more . . . I testify that it was my judgment, taking the balance of two factors in the situation, from all sides, that we would have been staggering for this whole country, if we had not had the police there."

The Reverend Hess was not aware that, at the time of the encounter, five of the respondent's employees, who had signed the Back-to-Work petition, who had been bonded by the respondent, and who had been warned by Curley to expect trouble were special police officers whom Curley had armed and stationed in the vicinity of C. I. O. headquarters. The respondent called none of these five as witnesses nor the three other employees who were special police officers present during the incident.

Apart from their connection with the Back-to-Work movement, the respondent's employees who were appointed as special police officers were obviously not impartial. It will be remembered that Hardman and Switter had reviewed the 66 names submitted by Peppard and Angstadt and had rejected most of them as too excitable, and that General Marlin had waived any question as to the fitness of the respondent's employees for the police force by stating that it was no time for neutral men.

Thus, prior to the encounter, the respondent had armed the police force with its gas equipment, staffed it with a foreman and 31 other employees, many of whom belonged to

a group bitterly opposed to the strike, and had urged violence against the strikers. In addition, the respondent had approved, if it had not actually connived at, the appointment of Major Curley whose activities we have already found were conducted in the interest of and on behalf of the respondent.

These acts of the respondent achieve their real significance in the light of a hitherto undescribed event which occurred on July 11. John Veto testified that at 5 o'clock that afternoon, as he was returning to his home by way of Cleveland Avenue, near C. I. O. headquarters, he passed within three feet of two special police officers, seated on chairs with their backs to the mill, and heard one of them say, "We are going to clean them up tonight." Veto testified that the man who spoke turned around, "and I recognized him as Bill Henderson, a chipper foreman in the mill . . . He said 'Where is your picket card' and I said 'I didn't have any because I am not on duty.' " Veto also testified that the other special officer did not turn around and that he did not recognize him.

To rebut this testimony, the respondent's counsel asked Officer Kraft:

> "Q. (by Mr. Pontius) During that afternoon I will ask you whether Mr. Henderson said to you—that is, this special officer Mr. Henderson, about five o'clock in the afternoon said to you this, or this in substance: 'That we are going to clean them up tonight?'
>
> A. He never said nothing like that to me."

Kraft, however, testified that on that afternoon there were three officers detailed to and present at this post: himself, and Special Officer Henderson and Kriger.[44] It will be remembered that Veto testified that he did not recog-

44. Kriger, like Henderson, is an employee of the respondent for whose bond the respondent was billed.

nize Henderson's companion. It is obvious, therefore, that Kraft's denial that Henderson "never said nothing like that to me" does not preclude Henderson's having made the statement to Kriger. We regard it as material that the respondent called neither Henderson nor Kriger as a witness and made no showing as to the unavailability of either.

At 9:30 p. m., after Switter and Hardman had left Massillon, Curley countermanded Switter's orders, raised and armed the guard at C. I. O. headquarters, and directed Fellabom to a post across the street from the strikers, with instructions to use his submachine gun. At approximately 11 p. m. when Curley and Henderson took it upon themselves to induce the crowd of strikers to go home, for no other avowed reason except that there were too many of them, Fellabom, pursuant to Curley's authority, used his submachine gun and shot out the headlight of Jones' car. As noted above, these shots were the overt act which precipitated the shooting by the other police officers.

After shooting about 25 tear gas projectiles, Officer Moore sent Gray, one of the respondent's foremen, to the Union Drawn Steel Company for more gas. Between 11:15 and 11:30 p. m., Curley telephoned from the respondent's main office to the Union Drawn Steel Company for more gas, and dispatched a police cruiser which returned with at least 25 cartridges of tear gas. Of the gas thus donated by the respondent prior to and during the encounter, Curley, Ickes, Moore, and Kelley testified that they fired a total of 158 gas projectiles or bombs at the strikers during the evening and that other special and regular police threw or fired an undetermined number of gas bombs or projectiles. The fury of the attack upon the strikers, led by Curley and Henderson, is matched only by the thoroughness of the round up, led by Henderson, in which all persons within a radius of three or more blocks from C. I. O. headquarters were arrested without warrants and incarcerated for sev-

eral days, for the crime, apparently, of belonging to the Union.

We are of the opinion, from an examination of all the facts, that if Curley had not seized the opportunity when Switter had left Massillon, to take command of the police force, to increase and arm the guard in front of C. I. O. headquarters, and to instruct the regular and special police to expect trouble, the attack upon the strikers would never have occurred. That Fellabom's shooting at the headlight touched off the attack, may have been a tragic accident; but it is clear that, if Curley had not issued his unauthorized orders, neither Fellabom nor 13 of the other police would even have been present at C. I. O. headquarters on the evening of July 11. The attack was led by Curley, the respondent's agent, and by Henderson, its foreman; at least eight of the respondent's employees as special police officers participated in the attack; all the gas and gas equipment for the attack was supplied by the respondent. The respondent had publicly approved the use of violence against strikers by the police of Chicago and Monroe and had urged the Chief of Police of Massillon to follow the example of the police of those cities. When Switter left Massillon, Henderson was overheard to say, "We are going to clean them up tonight." From the whole record we find that the respondent is responsible for the attack upon the strikers.

B. Canton

Of the respondent's plants in Canton, two are directly involved in this proceeding: The Canton Works (Central Alloy District) which employs between 5,000 and 6,000 employees; and a tin plate mill, employing approximately 650 employees, which the respondent acquired on July 1, 1936, from the Canton Tin Plate Corporation.

1. *The Plan of Employee Representation—Canton Works*

The Plan of Employee Representation was introduced at the Canton Works in June 1933 and, with minor amendments made in 1934, remained in operation until April 1937, after the decisions of the Supreme Court upholding the constitutionality of the Act. Thereafter, it was succeeded, as in Massillon, by the Employees Representative Association, which lasted until July 1937, when the Employee Representatives, who had been active in both the Plan and the Association, formed a new organization, the Steel Workers Union of America, which purported to be independent of the respondent. The formation and activities of the Association and the Steel Workers Union will be discussed hereafter.

The Plan at the Canton Works, as it existed until the latter part of April 1937, was substantially the same in structure and operation as the Plan at the Massillon Works. It is therefore unnecessary to describe it at length. It is sufficient to state that the respondent formulated and introduced the Plan, without submitting it to a vote of its employees; that throughout the existence of the Plan the respondent paid the Employee Representatives for attending meetings, during and after working hours, as well as for handling grievances; and that, down to the most minute item, the respondent defrayed all the expenses and furnished all the facilities for the operation of the Plan.

From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation (Central Alloy District) Canton Works and has contributed financial and other support to it.

2. *The Plan of Representation of Employees—Tin Plate Mill*

In August 1933 the Canton Tin Plate Corporation, then under independent ownership, inaugurated the Plan of Representation of Employees in its tin plate mill. After July 1, 1936, when the respondent purchased the mill, it continued this Plan in effect unchanged until April 30, 1937. With slight variations, this Plan substantially resembled the Plan at the Massillon Works. Neither at the time of its inauguration nor subsequently was it submitted to a vote of the employees. After July 1, 1936, the respondent continued to pay the Employee Representatives a dollar an hour for time spent during and after working hours at regular and special meetings, and continued to defray all expenses and furnish all facilities for the operation of this Plan.

On April 30, 1937, the respondent announced that in view of the Supreme Court decisions upholding the constitutionality of the Act, it would cease to pay the Employee Representatives. The Employee Representatives then sought to resign and discontinue the Plan, but on the solicitation of Sam Davey, then superintendent of the mill, decided to remain until the end of their term. At a regular meeting of the Employee Representatives on May 8, Sam Davey introduced Frank Geltz, Chairman of the General Body of Employee Representatives under the Plan and of the Association at the Canton Works, who explained the purposes of the Association and sought to enlist the support of the Employee Representatives. No action was taken on this proposal. In August 1937, according to Edward Kirkland, Secretary of the Plan, when the fiscal year of the Plan ended, no plans had been made for its continuation, because "we never asked the officials of the Republic Steel Corporation whether or not they wanted to continue the Plan."

From the whole record, we find that the respondent has dominated and interfered with the administration of the Plan of Representation of Employees at its tin plate mill, and has contributed financial and other support to it.

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3. *Events preceding the strike*

On July 2, 1936, shortly after the union had begun its campaign to organize the employees in the Canton-Massillon area, the respondent issued its statement, described above, announcing that "Republic stands for the open shop principle. . . . Every Republic employee owes a duty of loyalty to the Company so that its best interests may be served. Conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management will not be tolerated."

The circumstances surrounding the discharge of Victor Arias on August 2, 1936, serve to illustrate the method by which the respondent at this time sought to give effect to this policy. Arias had been continuously employed by the respondent since 1927, except for several weeks in May 1935 when he took part in a strike at the respondent's Berger Manufacturing Company plant. When he applied for reinstatement, superintendent Ellaser told him he had been active during the strike and "that is bad on your card." Several weeks later, in June 1935, Arias was reinstated. At that time, his foreman, David Carnes, offered him a job as a checker if he would report the activities of the men. Arias refused.

In July 1936 Arias joined the C. I. O. and was the first organizer in the Canton area. As such, he assisted Howard Porter and the other outside organizers sent to the Canton-Massillon district. It will be remembered that these organizers were given permanent shadows in the form of

Long and McCallister, plant policemen at the Union Drawn Steel Company, whose special business it was to follow them. In the latter part of July, Arias conducted meetings on farms and obtained 25 applications for membership and signed up eight members for the union. On August 9, when he returned from a week's vacation, he was told to stay home, that he would be called when needed. "Why are they holding me out?" he asked Graham, assistant to superintendent Ellaser, "is it anything concerning my work?" "No," replied Graham, "not that I know of. There are activities that you are in that I don't know about or exactly what it is." Superintendent Ellaser informed him: "Vic, you are in Dutch. I don't think I can do anything for you." Arias pleaded his long service with the respondent, his satisfactory work, his necessity to support his parents. Ellaser replied, "I am sorry. I can't do anything for you."

Arias then left Canton in search of a job. In April 1937, upon his return, he met Frank Geltz, Chairman of the General Body of Employee Representatives under the Plan, who offered to help him. Geltz, however, was unsuccessful. He reported that he had seen Ellaser who said that Arias had a company police record, and that Ake, the employment manager, had told him that on his record Arias talked too much.

During his nine years employment by the respondent, Arias had received at least three promotions; at the time of his discharge he was an inspector in charge of the chipping bed, earning approximately 90 cents an hour. Since his discharge on August 2, 1936, his total earnings, up to August 11, 1937, have been $164.40. He has not received regular and substantially equivalent employment elsewhere. Although the respondent in its answer denied that Arias was discharged because of his union activities, it produced no witnesses and offered no evidence to rebut Arias'

testimony. We find that the respondent discharged Victor Arias for the reason that he joined and assisted the union.

Having thus plainly warned its employees that it was prepared to enforce its statement of July 2, the respondent took further repressive steps to halt the growth of the union. At the Canton Works and the tin plate mill, its activities paralleled those already described at the Massillon Works. Employees were called together at safety meetings once or twice a month, where a superintendent and foreman repeatedly extolled the virtues of the Plan and threatened employees with the loss of their jobs if they joined the "outside" union; employees were asked by a superintendent to sign petitions that they were satisfied with the Plan and were informed that the C. I. O. would never succeed; active union members were cajoled by supervisory employees not to waste their time passing out handbills, admonished to watch their step, and warned to stop trying to organize; a superintendent spoke with approval of a pamphlet which appeared in the plant, purporting to show that the C. I. O. was a revolutionary organization, controlled from Moscow, whose ultimate purpose was to overthrow the government of the United States by force and violence.[45]

On March 5, 1937, the respondent published its statement of open shop policy in the newspapers, as described above. Carl Myers read the statement to the General Body of Employee Representatives, to whom he promised the same degree of cooperation from the management that they had received in the past. Besides Arias, three employees, whose cases we discuss below, were discharged for union activities at about this time.

Despite these acts of interference and coercion by the respondent, the union continued to grow. On February 1,

45. *Join the C. I. O. and Help Build a Soviet America*, published by the Constitutional Educational League, Inc., New Haven, Connecticut.

1937, All Nations Lodge No. 1200 was established in Canton for the employees of the Canton Works and the tin plate mill. A number of the Employee Representatives joined the union, and in certain departments of the plant the union claimed to have achieved a membership of a large majority of the employees.

In the tin plate mill, where the union claimed a membership of approximately 90 per cent, the respondent sought to coerce its employees to leave the union by repeated threats to close the plant. Kenneth Poorman, a member of the union, testified that in October 1936 at a safety meeting in the tin plate mill, James Davey, then operating superintendent of the mill, informed the employees that "this is an old and obsolete mill. The Warren mill is of a newer type. . . . If we stay out of labor trouble this can be the mill to operate." Although Davey denied having used the specific language attributed to him on this occasion, we are not impressed with his denial. He admitted having told employees on another occasion that the mill was old and obsolete and that he hoped they would stay out of labor troubles. And even from Davey's own studied and evasive account of his remarks at the October safety meeting it is clear that the employees could reasonably have taken away only one impression—that the respondent would shut down the mill if they joined the C. I. O.

In January 1937 superintendent Thomas approached Homer Downerd, president of Lodge No. 1200, and asked him why he had become so active in organized labor. According to Downerd, Thomas said, " 'Do you think you are doing right?' and I said 'Yes, I think I have as much right to belong to organized labor as any one else has.' And he said 'Do you know what you are going to do?' and I said 'Yes, I do. We are going to put this organization across' and he said 'No, I will tell you what you are going to do —you are going to eventually shut down this plant and that

will put not only me, but everyone else out of work and unless you quit, you will shut down the tin plate plant.' "

In February 1937 superintendent Thomas saw Martin Beckner, vice president of Lodge No. 1200, passing out hand bills near the Canton Works. "Beckner," said Thomas, "you do not seem to be the same sort of a fellow, the kind of a fellow that would be messing around with a bunch of radicals." "I told him," Beckner testified, "that I did not realize that I was a radical and he said, 'Don't you realize that Republic Steel will be closed down and won't operate any more?' "

On May 5 a notice appeared on the bulletin board at the tin plate mill announcing that the mill would be shut down until further notice, and that employees should call Thomas later in the week and find out when operations were to be resumed. The tin plate mill remained closed until May 24, the day before the strike. It appears that the production at the mill during April and May in terms of gross tons was as follows: For the week beginning April 5, 541; April 12, 888; April 19, 609; April 26, 921; May 3, 315; May 10, 0; May 17, 0; May 24, 650. Samuel Davey, then superintendent of the Canton Tin Plate Division, testified that there was no production for the weeks of May 10 and May 17 chiefly because a strike had been called at the plant of the Canton Enamelling and Stamping Company on April 29, at which time all orders from that company ceased, and that the respondent had in process or finished at that time approximately 1400 tons in the plant, equivalent to two weeks' work.

This ostensible reason for the shut-down is vitiated, however, by reference to a number of events which occurred before and after May 5, when the shut-down was announced. On May 8 Beckner telephoned superintendent Thomas and asked when the mill would start up. "He told

me," Beckner testified, "he did not believe the mills would start up until we got rid of that union." During the strike at the respondent's plants in Canton, Thomas told Beckner, " 'It looks like the Tin Plate had made a mistake. The rest of the mill is going to resume but I do not think the Tin Plate will ever resume again.' And he felt it was all the fault of the men organizing because we had 90 per cent of the organization at that time." Since the respondent did not call Thomas as a witness and made no showing as to his unavailability, these and the earlier threats stand uncontradicted.

Furthermore, the respondent was in the sole possession of proof in support of its allegation that a decrease in orders caused the shut-down. We are not satisfied that, in view of the circumstances described above, it has supplied an adequate business reason for its conduct. It has not shown the amount or relative size of the orders of the Canton Enamelling and Stamping Company, nor how long the strike there lasted, nor precisely to what extent that strike caused a decrease in orders.

In weighing the evidence upon this point, we also take into account the fact that, at this time, the respondent's Canton and Massillon plants were both under the supervision of Carl Myers, Acting District Manager for the one region; and that the shut-down on May 23 of the Massillon Works was caused, not for the business reasons alleged by the respondent, but for the purpose of intimidating and coercing the employees.

It will be remembered that on May 3 Clinton Golden, Regional Director for the S. W. O. C., wired the respondent that widespread unrest prevailed among its employees over the uncertainty of the respondent's position regarding a signed collective bargaining contract, that this unrest had been accentuated by the lay-off of several hundred

union members at the Canton and Massillon Works, and that the union urgently requested a conference to negotiate a signed, written contract. It thus appears that on May 5 the respondent gave a double answer to the union: Voss replied to Golden that he saw no necessity for a signed contract, but was willing to arrange a conference; Davey shut down the tin plate mill, a stronghold of the union, and locked out all but the maintenance employees.

From the whole record we find that the respondent shut down its tin plate mill at Canton and locked out almost all its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the union. The respondent thereby discriminated against its employees with respect to hire and tenure of employment and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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4. *The Employees Representative Association*

After the decisions of the Supreme Court on April 12, 1937, the General Body of Employee Representatives met on several occasions in the Canton Works on company time to discuss the formation, dues, and constitution of a new organization to succeed the Plan. The precise date upon which this organization—the Employees Representative Association—was formed does not appear. The record does show, however, that on April 24 Joseph Cox, an Employee Representative, signed a membership card in the Association and with other Employee Representatives began to solicit membership for the Association in the plant on company time.[46] On April 28, according to the minutes of a

46. The signatures of the Chairman and Secretary of the General Body of Employee Representatives under the Plan are affixed to this card as Chairman and Secretary of the Association.

special meeting of the General Body of Employee Representatives of the Plan, "the proposed amendments to the by-laws were again reviewed and it is the feeling of the General Body that no further changes should be made at this time." These amended "bylaws"—the amendments adopted April 22, 1937, referred to above[47]—became the constitution of the Association. The respondent's participation in the formulation of these amendments, and its modified control of the operations of the organization under them, have already been discussed. At the same meeting on April 28 a treasurer was elected and Representatives assigned to committees.[48] A motion was carried that dues were to be temporarily waived and "some other method of raising finances, possibly through a raffle, should be used." At the conclusion of the meeting a "force report," or schedule, covering the time spent in the meeting by the Employee Representatives, was prepared, according to which the Employee Representatives were to be compensated by the respondent. Thus, as in Massillon, the new organization was, except in name, virtually identical with the old.

As in Massillon, the respondent gave the Association a free hand to organize opposition to the union. Frank Cutshall, a member of the union, testified that on May 16 or 17 he was notified by his foreman to attend a meeting in the bar mill at the Canton Works. "They were going to close down the department and everybody was to go over and we was to be paid for the time we would be over there at the meeting. They said they were holding these meetings for each particular turn, the three turns. At one o'clock they blew the whistle and the crane men, the chip-

47. See Section A, 3.

48. The office of Treasurer did not exist under the Plan, and apparently was the only office in the Association for which an election was held. As noted above, the Chairman and Secretary under the Plan remained as Chairman and Secretary under the Association.

pers, the grinders and everybody employed in the plant, or practically so, attended. The whole department was shut down." Dan Allen, an Employee Representative, announced to the 400 assembled employees that "they were forming a union for the employees of this division of Republic Steel and they did not want any outside union. They wanted to make preparations if a strike was called to meet up near the square and make a rush for it and go down in a body. . . . They were anticipating the strike. They asked approval of . . . some of the men in this group." Cutshall testified that he was paid for the time spent at this meeting.

On May 20 about 300 foremen and chippers at the Canton Works were notified to quit work to attend a meeting in the plant. Sammy Stokes, one of the chippers, testified that William Dunn, an Employee Representative, announced that "he was calling this meeting to explain this union plan to them, and he told the fellows that the company was expecting a strike and he wanted them all to sign a paper that they will work . . . and when the strike was called they should meet at the public square and they would prepare a way for them to go into the mill. And so he said 'I am going to pass out these blank pieces of paper and I want you to sign them.' " Stokes testified that he was paid for his attendance at this meeting. Cutshall, who also attended this meeting, testified that Dunn announced that the purpose of the meeting was to form an employees union for the Canton Works alone, in order not to "mix into any more troubles"; that Dunn handed out a copy of the pamphlet previously referred to, "Join the C. I. O. and Help Build a Soviet America"; and that Employee Representative Allen launched into an attack upon John L. Lewis.

From the whole record, we find that the respondent has dominated and interfered with the formation and ad-

ministration of the Employees Representative Association and has contributed financial and other support to it.

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5. *The strike*

Although the events at Canton are not set forth in the record in such detail as those at Massillon, the testimony indicates that the respondent pursued a similar course in mobilizing its forces to break the strike. The following narrative is summarized largely from the testimony of witnesses for the respondent.

On or about May 18 superintendent Cornell told foreman Kuhns that the management intended to operate the plant in the event that the strike was called, and that he wanted the employees in the plant before it started. At 4:45 p. m. on May 25 Cornell called Kuhns to his office, told him there was to be a "meeting of the C. I. O. and it looked very much as though a strike was going to be pulled," and instructed him to have the employees come to the plant by 9 o'clock. On the night of May 25, when the strike was called, trucks arrived at the plant loaded with cots. Under the inducement of a bonus, free meals, and 16 hours' pay for 8 hours' work, a number of employees ate, lived, and slept in the plant from May 25 until July 1.

At 7 p. m. on May 25, before the strike was called, 12 Employee Representatives, including Frank Geltz, Ray Lilly, Dan Allen, and other active members of the Association, met in the assembly room of the respondent's Industrial Relations Building at the Canton Works. In previous discussions this group had decided that if the strike was called they would form a back-to-work movement and seek to have a vote conducted under their auspices among the employees at the Canton Works on the question of whether the employees wished to return to work or to continue on

strike. At this meeting plans were made to hold the vote in the City Auditorium on Thursday, May 27. At 8:30 p. m. the group conferred with plant superintendent B. R. Richardson, who expressed his approval of their proposed activities. At 11 p. m. the strike was called and the group retired to two rooms at the Belden Hotel in Canton, which thereafter served as the headquarters for its activities.

Within a few days this committee, augmented by a number of other Employee Representatives, undertook to patrol the city, armed with shotguns, allegedly to protect the homes of non-strikers. On several occasions it held meetings of employees who wished to return to work, and conferred with the mayor of Canton with regard to its demands. On June 9 T. K. Harris of the Canton Law and Order League, said of the Back-to-Work movement, "It is becoming more difficult to keep them from taking the law into their own hands."[49]

As noted above, on or about July 5, a few days before the National Guard were withdrawn from the Canton-Massillon area, 56 of the respondent's employees were bonded by the respondent and sworn in as private police officers of the City of Canton. Of the 56, one, B. R. Richardson, was a plant superintendent, another, Russell Horn, was a supervisory official and at least three were members of the Back-to-Work Committee.

Most, if not all, the expenses of the Back-to-Work Committee were defrayed by the respondent. J. G. "Monk" Stewart, a supervisor of the guards, spokesman of the Back-to-Work Committee, and a roller in the mill with 10 or 12 men under him, testified that from May 25 until July 2, when the National Guard arrived, he received from the respondent for his work a total of approximately $500,

49. What the Editors are Saying About the Republic Strike—reprinted by Republic Steel Corporation, from *The Canton Repository* of June 10, 1937.

calculated on the basis of his regular pay of $28 a day. Other members of the Committee testified that during this period they were paid approximately one and three quarters times their regular pay, or, in some instances, a bonus of $25 a week in addition to their regular pay. None of the witnesses for the respondent claimed to know who paid for the rooms at the Belden Hotel, although all admitted that no funds were collected by the Committee. It appears that Carl Lappin, an Employee Representative who acted as paymaster to the Committee for the respondent, rented the rooms in his own name.

Since employees participated in the Back-to-Work Committee and since it existed in part, if not wholly, for the purpose of dealing with the respondent concerning a labor dispute, it is a labor organization within the meaning of the Act. From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Back-to-Work Committee and has contributed financial and other support to it.

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6. *The Steel Workers Union of America*

On July 13, approximately two weeks after the plants had reopened, a number of the members of the Back-to-Work Committee whom the respondent had paid for acting as guards met at "Monk" Stewart's home to discuss the formation of an organization. Several days later Frank Geltz, Chairman of the Association, told Stewart that the former Employee Representatives, whose terms had expired in June, were also considering forming a new organization. After one preliminary meeting of the two groups, a formal meeting was held on June 20 in the Belden Hotel, where Stewart was elected temporary Chairman; Lilly, Secretary; and Geltz, Treasurer. On the following day, at a meeting in the Belden Hotel with Attorney Frank Bow,

the name "Steel Workers Union of America" was selected, application cards drawn up, and chairmen of organization committees appointed. Although at the time of the hearing on September 15 no constitution or bylaws had yet been adopted, and no membership meeting had been held, Stewart testified that all employees at the Canton Works, except supervisory employees and police, were eligible for membership and that of 3900 eligible employees, between 2500 and 2700 had signed application cards for membership. Notices announcing the formation of the organization were posted in the plant; and members of the organization committees collected dues, initiation fees, and signatures to membership cards in the plant during working hours.

It is clear from the record that the Steel Workers Union, like the Independent Association at Massillon, was merely the successor to the Plan, the Association, and the Back-to-Work Committee, and still the creature of the respondent. Its officers were the officers of the predecessor organizations and its active members were former Employee Representatives or members of the Back-to-Work Committee. It received the same favors from the respondent as had the predecessor organizations. An organization with such antecedents, formed under such conditions, necessarily could not represent the free choice of the employees.

From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Steel Workers Union of America and has contributed support to it.

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7. *The discharges*

The complaint, as amended, alleges that three other employees at the Canton Works, besides Victor Arias, were

discriminatorily discharged. The record shows that all three were discharged or laid off by superintendent Hopkins. We take up their cases in chronological order.

Mike Ugranovich. Ugranovich, a member of the union, had been employed by the respondent since 1934 as a grinder in the billet sheds. In 1935 he participated in the strike at the respondent's Berger Manufacturing Company plant. He testified that when he returned to work after that strike Edward Hopkins, superintendent of the billet sheds, "fired him off the job" for about a month, saying, "You got a job on the picket line and I cannot use you any more." Ugranovich then applied for his job to superintendent Baxter, who, in the presence of Hopkins, asked Ugranovich whether he had been on the picket line "and he asked me 'How long have you been in this country?' and I told him 'About 20 years' and he said 'Are you still crazy . . . I will give you your job back if you do not do that any more' . . . He told me I would have to stick with the company."

In December 1936 and January 1937 Ugranovich attended a number of safety meetings in the plant, at one of which, he testified, superintendent Hopkins said, "Don't belong to the outside union. You got to stick with the company union . . . If I find any more men (belong to the) outside (union), he cannot work for me." Ugranovich testified that on February 11, 1937, he was summoned to superintendent Hopkins' office where Hopkins said, "You have got some slow work, five and six weeks on a job . . . Don't you mind that strike in 1935 . . . I give you a chance that time and still now there is something else outside, some kind of a name, C. I. O.—and you are in it already." Ugranovich was then discharged.

The respondent contends that Ugranovich was discharged on February 8, 1937, not for his union activities,

but because he came to work in an intoxicated condition. Superintendent Hopkins testified that, although he himself had not seen Ugranovich in an intoxicated condition, foreman Eichelberger reported to him that at midnight both he and the grinder boss had smelled alcohol on Ugranovich's breath and had sent him home with instructions to return in the morning, and that at 9 o'clock the next morning Hopkins had laid him off indefinitely because he had come to work intoxicated. "He tried to tell me that he was not intoxicated. I told him he was because my two foremen had told me that." Hopkins also denied some, but not all, of the statements attributed to him by Ugranovich. He denied that he had mentioned the C. I. O. to Ugranovich at the time he discharged him or said that his work was slow, but asserted, on the contrary, that in his opinion Ugranovich was a capable worker and not slow.

Eugene George, a grinder foreman, testified that at 12 o'clock on February 8, when Ugranovich reported for work, he smelt a strong odor of liquor on the man's breath, noticed that the surface of the steel on which Ugranovich was working had circular instead of horizontal marks, reported to foreman Eichelberger that Ugranovich was in no condition to work, and saw Ugranovich leave with a wobbly step. George added that he told Eichelberger that Ugranovich had a habit of laying off on pay day, that he had spoken to Ugranovich once or twice before about coming to work with liquor on his breath, and that he now recommended him for a discharge. Eichelberger confirmed George's testimony and asserted that Ugranovich was apparently under the influence of liquor, that his work was being done in an improper manner, and that when Ugranovich left he walked in an uncertain condition.

Ugranovich, however, denied that he had come to work intoxicated or that he had been given that reason for his discharge; denied that he had been warned about coming to

work intoxicated before, or that he had a habit of laying off for two or three days after pay day; admitted that the tool which he used had made circular instead of horizontal marks on the surface of the steel, but explained that the fault was due to another grinder in failing to have the required number of belts on the machine. Ugranovich also asserted that he had been "off booze for 28 months and never touched it."

In this conflicting state of the evidence it is instructive to consider the respondent's policy, as stated by George, Eichelberger, and Hopkins, with regard to men who come to work in an intoxicated condition. George testified that Hopkins had personally instructed him to send a man home if he came to work in an intoxicated condition, that he had observed hundreds of men in the mill with liquor on their breath and on certain occasions had himself come to the mill with liquor on his breath, but that he disciplined an employee by sending him home only if the liquor on his breath was very strong or the man wobbled. George also testified that of the hundreds of men whom he had observed with liquor on their breath, Ugranovich was the only one who wobbled and whom he reported. Eichelberger testified that the general policy of the company was that so long as a man could work safely and was not intoxicated to the extent that he wobbled, no matter how strong the odor of liquor on his breath, he was not sent home. Eichelberger also testified that he could not remember having recommended discharge of any of the hundreds of employees who had come to work with liquor on their breaths, but claimed in the past eleven years to have recommended some men for two or three day layoff because of liquor on their breaths. Hopkins testified that he sends an employee home but does not discharge him for his first offense in wobbling, and that even if he had smelled liquor on his breath a couple of times and he was wobbly he would lay

him off for two or three days, but would not discharge him.

It thus appears that even if Ugranovich was intoxicated when he came to work, which he denies, and had come to work once or twice before with liquor on his breath, which he also denies, the normal procedure would have been to reprimand and discipline him with a two or three day layoff instead of discharging him. Despite the respondent's policy, however, he was discharged, and, according to George, was the only man ever to have been discharged under the "wobbling" rule. In view of Hopkins' statement to Ugranovich at the time of his discharge, which is only partially denied, and certain of his other antiunion remarks, which are not denied, we are satisfied that Ugranovich was discharged not for his alleged intoxication but because he joined and assisted the union.

Ugranovich has not received substantially equivalent and regular employment elsewhere. At the time of the hearing he had earned approximately $111 since his discharge.

Will S. Wright. During a strike in 1922 at the Canton Works, then owned by the United Alloy Company, one Ake, superintendent of employment for the United Alloy and later for the respondent, hired Will S. Wright as a strikebreaker, promising him that "if you stick with the Company, you will have preference for a job as long as you do not do anything out of the way with the Company." After working three months, Wright left the employ of United Alloy and worked elsewhere until 1933, when he was employed by the respondent as a chipper. In May 1935 Wright took part in the strike at the respondent's Berger Manufacturing Company plant. After this strike, when Wright applied for and was denied reinstatement, he testified that superintendent Hopkins told him, "Bill if you

want to work here, you have to stick with the Company. You cannot have one foot over here and one over there and expect the Company to stick with you." In the early part of 1936 Wright was offered help in getting his job back by one Williams, a chipper employed by the respondent, whom Wright characterized as a "snitcher for the Company." Pursuant to Williams' instructions, Wright went to Ake, superintendent of employment, who gave him a note to Hopkins. Wright testified that Hopkins offered him a job if he would stick with the Company. Wright accepted.

After returning to work, Wright attended numerous safety meetings in the plant where superintendent Hopkins, foreman Johnston, and "Charlie, the bed foreman," on occasion told the employees, "You don't want to mess around with no outside union, because if you want to work, you cannot be tied up with no union." In the early part of 1937 Wright was asked by Beckner to join the C. I. O. Williams advised him, "If you aint signed, you better not sign, because the damn C. I. O. aint no good, if you want your job." Several weeks later Beckner again asked Wright in Williams' presence to sign a membership card. "Williams sneaked out," Wright testified, "and, about two days after that (on April 27) . . . I was called into Mr. Hopkins office." Hopkins informed Wright and other employees who were present that new men were being laid off in order to give the older men more hours. Wright stayed after the others had left and reminded Hopkins that he had been employed in 1922 and that Ake had promised him preference. Hopkins replied that he had told Wright that if he wanted to work for the Company, he had to stay on the right side of the fence and could not have one foot over here and one over there, and that Ake was "not running the show." "I told him," Wright testified, " 'I am on the right side of the fence when I work.' And he said 'You are not dumb, you know what I mean.' " Wright also testified that some of

the chippers who were not laid off had less seniority than he.

The respondent contends that Wright was laid off with a number of other chippers, without discrimination, for purely business reasons. Hopkins testified that because of the lack of tonnage the respondent decided to lay off 37 chippers; that Wright was thirty-fourth in length of service, and was laid off in regular order; that the respondent's policy with regard to seniority was that if a man was laid off for 30 days or more, while there was work available, his seniority rights were lost; that Wright had been laid off on May 22, 1935, 6 days before the Berger strike and had returned to work sometime in 1936; and that with this layoff Wright had lost the seniority rights which had accrued to him since his employment in 1933.

On cross-examination, however, Hopkins contradicted his earlier testimony with regard to the respondent's seniority policy, by stating that if an employee were laid off for more than 30 days he would not lose his seniority rights. On this basis, it appears that Wright was entitled to credit for approximately two years' service, and that when he was laid off on April 27, 1937, the regular order of seniority was not followed.

Although Hopkins denied all of the statements attributed to him by Wright, we are convinced that his denials are not to be credited. The respondent had pointedly warned its employees in its statement of July 2, 1936, that it would not tolerate "conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management." On March 5, 1937, after publishing the respondent's statement of its open shop policy in the newspapers, Carl Myers had summoned the Employee Representatives to a meeting at which he repeated the respondent's statement of July 2, 1936.

The record contains uncontradicted testimony that other superintendents and foremen had warned employees not to join the union under threat of loss of their jobs. Moreover, although Hopkins denied having made the statements at safety meetings attributed to him by Wright, he admitted that he could not recall what he had said. Ugranovich's testimony with regard to certain of Hopkins' antiunion statements is undenied. Under these circumstances we are of the opinion that Wright was laid off on April 27, 1937, because he had joined or was suspected of having joined the union.

Wright has not earned any money since April 27, 1937.

Sabri Shaban. Shaban was first employed by the respondent as a chipper from June 1933 until March 1934, when he left the respondent's employ for a visit to the "old country." In October 1936, upon his return, he applied to superintendent Hopkins for his former job. He testified that Hopkins asked him, "'You belong to a union?' and I say 'No.' 'If somebody go on the road and stop you . . . what are you going to say?' And I just figure and I sit two or three minutes . . . He said 'What are you going to say to me now?' I say 'I know I no have to sign my name because I am hungry.' He said 'If you listen to me that way, I am going to give you a job right now.' And he gave me a job."

On or about April 23, 1937, Shaban went to work with a copy of the "Steel Worker," apparently a union newspaper, in his back pocket. Shaban testified that Hopkins saw the paper, pulled it from Shaban's pocket, and said "'Why you no listen to me when I say I would give you a job' And he throw away that paper and didn't say nothing that time. In three or four days he called me in the office and he say 'You no listen to me that time when I was talking to you and I give you a job and you belong to the

C. I. O. now.' " Shaban was then laid off. He testified that many chippers hired with him on October 25, 1936, and others with less seniority were not laid off.

The respondent contends that Shaban, like Wright, was laid off on April 27 without discrimination, according to its policy of seniority. Hopkins testified that of the 37 chippers to be laid off Shaban was twentieth on the list, and that in determining Shaban's seniority he had counted the period from October 1936 to April 1937 and not the nine-month period in 1934 and 1935 when Shaban had worked for the respondent, in accordance with the respondent's seniority policy of cancelling rights which had accrued from former service, after a lay-off of 30 or more days. In view of Hopkins' later admission that an employee did not lose his seniority rights after such a lay-off, it appears that Shaban would be entitled to credit for his service in 1934 and 1935, even apart from his claim that men hired on or after October 1936 were not laid off. Although Hopkins denied all statements and acts attributed to him by Shaban, we do not find his denials convincing for the reasons cited in our discussion of Wright's discharge.

We find that Shaban was laid off on April 27, 1937, because he was suspected of having joined the Union. Shaban has earned $25 since April 27.

The cumulative testimony of Ugranovich, Wright, and Shaban, although denied in whole or part by Hopkins, satisfies us that Hopkins followed a policy of questioning employees on their union affiliations, and of discharging them or laying them off for real or suspected membership in the Union.

C. YOUNGSTOWN

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Youngstown District was adopted in June 1933 and slightly revised in June 1934 and March 1937. On April 19, 1937, at a special meeting of the General Body of the Employee Representatives, McCoy, the Management Representative, announced that the respondent would withdraw financial support from the Plan. Shortly thereafter, the Employee Representatives formed the "Employee Representation Plan" which purported to be financially independent of the respondent, supplied themselves with membership cards and launched a membership campaign. On May 19, 1937, the Independent Federation of Republic Employees, herein called the Federation, was organized by the Employee Representatives for the dual purpose of lending support to the "new" Plan and taking measures to prevent the strike. Immediately after the strike was called and during the strike, the Federation sponsored the Back-to-Work movement and solicited signatures to back-to-work petitions. Thereafter, the Federation was combined with the Plan and a constitution and bylaws were adopted which purported to establish the Federation as a collective bargaining agency for the employees. The formation and activities of the "new" Plan and the Federation will be discussed hereafter.

The plan at Youngstown, as it existed until April 19, 1937, was substantially identical in structure and operation with the Plan in Massillon. It is therefore unnecessary to describe it at length. It is sufficient to point out certain circumstances and incidents which attest to its domination by the respondent.

The Plan was introduced and fostered by the respondent. Its adoption was never submitted to a vote of the em-

ployees, although the preamble to the March 1937 edition of the bylaws states that the Plan "has been adopted by the employees and the Company for the purpose of collective bargaining." John Guest, one of the Employee Representatives, testified that he was first apprised of the Plan in June 1933 when the foreman of his department handed him a copy of the bylaws and he saw posters announcing that the Plan would be put into effect and that, pursuant to it, nominations and elections of representatives would take place.

All the expenses involved in the conduct of the Plan were defrayed by the respondent, and all the necessary facilities were furnished by it. The Employee Representatives were reimbursed by the respondent not only for time lost during working hours but also for any additional time spent in attending meetings and performing other work in connection with the Plan.

In spite of the provisions in the bylaws that nominations and elections shall be "so conducted as to avoid influence or interference with voters," the evidence indicates that even the election campaigns were not always free from at least indirect participation by the management. Thus in the 1935 elections for Representatives, Joseph O'Hara, who opposed the reelection of John Guest, was granted permission by the foreman to leave his work and go around soliciting votes among the employees. Such permission was not given to Guest.

The testimony of Ralph Mondora, one of the Employee Representatives, shows that, at least in some instances, Employee Representatives were more concerned with the remuneration they received for their services than with promoting the interests of their constituents. Mondora admitted having lost interest in the Plan after the respondent announced its withdrawal of financial support. He

testified, "We tried it and got to a point that there wasn't no funds, and we quit; I quit it as I wasn't going to use my time representing anybody, so I dropped out."

The futility of the Plan stemming from the respondent's control is strikingly illustrated by the operation of the Joint Committees and the Joint Appeals Committee, Joint Committee No. 4, which were composed of five Employee Representatives and five Company Representatives. The submission for adjustment of grievances to Joint Committee No. 2, in charge of wages, employment, schedules and working conditions, generally resulted in a five to five vote. The same result ensued upon an appeal to the Joint Appeals Committee. Such a deadlock generally ended the dispute and, in effect, constituted a decision against the employees. It is further significant that even at the first annual meeting of Joint Committee No. 2, when officers were being elected, repeated balloting for chairman resulted in a five to five tie. The Employee Representatives finally conceded the chairmanship to the management.

Numerous provisions in the bylaws of the Plan reflected management control. Typical were the provisions requiring the approval of the Management Representative for holding special meetings of the committees, and the consent of the management in order to put the question of the dissolution of the Plan before the employees at an annual election.

At a number of meetings of the General Body, the Employee Representatives themselves signified their dissatisfaction with the Plan and leveled criticism against its operation. Thus at a regular meeting held on February 25, 1937, the General Body voted its protest against the methods used by some superintendents and foremen in calling in employees who had asked an Employee Repre-

sentative to act for them, and requested that they be restrained from doing so unless with the consent and in the presence of the Representative.

At a special meeting held on March 15, 1937, the General Body discussed the sentiments of the employees relative to the Plan and recommended the following:

> "1. A change in the Plan whereby it would not be dominated by the Management.
>
> "2. A small fee of 25c of monthly dues and the right to use the check-off system to make the Plan self-supporting.
>
> "3. The elimination of Nos. 2 and 4 Joint Committees, as has been proven nothing but tie votes are ever counted in those meetings.
>
> "4. The right to hold meetings with the men they represent . . .
>
> "6. When agreements are made, that they be made in writing and not orally.
>
> "7. The right to recall Representatives.
>
> "8. That when a case is presented to Management, to speed it up and not carry it over a lengthy period of time . . .
>
> "10. The right of the Employee Representatives to hold a meeting and to have the employees whom they represent cast a ballot as to their choice of the Plan—whether or not they wish to continue, or to have the check-off system of a monthly fee."

These proposals were submitted to the management at the meeting of the Central Council of Employee Representatives which was held in Cleveland on March 18, 1937. The policy of the management announced at the meeting was thereafter reported to the General Body at a meeting held

on March 25, 1937. The management indicated that there was a possibility of eliminating Joint Committees Nos. 2 and 4, that it would give permission to Employee Representatives to hold meetings with their constituents, that it would grant the right to recall Employee Representatives, and that it would endeavor to speed up cases as much as possible. The management categorically refused to enter into any written agreement and to give permission to use the check-off system for dues. Significantly, the management was silent on the question of eliminating its domination over the Plan and of determining by secret ballot whether the employees desired the continuance of the Plan.

On the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation at its Youngstown District, and has contributed financial and other support to it.

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2. *Events preceding the strike; formation of the "new" Plan and the Federation*

The organizational activities of the S. W. O. C. in the Youngstown District began in July or August 1936. At some time thereafter, headquarters were set up in the Terminal Building, and Republic Lodge 1331 was established. Commencing in October or November, meetings were held first in Truck Drivers' Hall and then in the Roumanian Hall.

Surveillance of the meetings by company police began almost immediately. Joseph Gallagher, one of the first employees of the respondent to join the S. W. O. C., testified that whenever a meeting was scheduled, company police were present outside the meeting hall. Particularly conspicuous among the company police was Snyder, who, in

the words of Gallagher, seemed "as though he was assigned permanent to that kind of work." The attitude of the company police is illustrated by the verbal altercation which, according to Gallagher, took place between them and Burke, an S. W. O. C. organizer, outside of Truck Drivers' Hall where a meeting was scheduled. An automobile with company police was parked near the hall. Burke said to them, "You better get going rats," and the reply was, "We are here to stay if we have to shoot our way through it. You'se better get going."

On January 23, 1937, Gallagher was discharged. He had been employed as an inspector in the electrical department, and his duties consisted in making the rounds of inspection and answering whistles summoning him in case of any trouble. The evidence is conflicting with respect to the circumstances attendant upon his discharge. John H. Graft, the electrical superintendent, testified that during that time there was a flood condition in Mahoning Valley, that Gallagher was warned to "watch his step," and that he was nevertheless caught asleep in the control house, or "shanty," where inspectors were not permitted to rest. Graft further testified that he did not discharge Gallagher but merely told him to go home and get some sleep, and that he returned for his money and never requested to be permitted to come back to work. Gallagher, however, testified that he was always accustomed to rest in the "shanty" when there was no immediate work without anyone ever objecting, that there was no danger in his department that night, and that he left the shanty immediately upon the blowing of the whistle. According to Gallagher's testimony, the following conversation took place:

> ". . . my superintendent, Mr. Graff (Graft), says to me: 'Joe, I had Mr. Walker blow that whistle for you.' I says, 'What is it for, Johnny?' and he says: 'Well, you have been sleeping in there; you can go

ahead home until I send for you.' I says: 'Well, you have got to give me a better answer than that, Johnny, before I ever accept it . . .'

"He says: 'Well, Joe, I know you couldn't have been sleeping for you answered the whistle too soon, but,' he says, 'if I was you, I would go ahead on home.' "

When Gallagher returned to see Graft the following morning, the company police refused to let him enter. On pay day he received his money and was never asked to return to work. In vew of the open hostility of the respondent toward outside unions and Gallagher's generally known membership in the S. W. O. C., we are inclined to the belief that the incident in the shanty was a pretext seized upon by the respondent to justify its conduct and that Gallagher was in fact discharged because of his affiliation with the S. W. O. C. However, it is unnecessary to make a finding with respect to this discharge, since it is not a basis of the complaint.

Beginning in February the S. W. O. C. organizers intensified their activities by visiting employees and talking to them about organization. Espionage by the respondent became correspondingly more systematic and persistent. Snyder was stationed near the headquarters of the S. W. O. C. in the Terminal Building and apprised other company police of the movements of the organizers. Gallagher testified that he was followed from the time he left his house at night to go to the Terminal Building until he returned. Charles Fagan, another organizer, testified to a particular occasion when he and Gallagher were followed "all around town" upon leaving the Roumanian Hall where they had attended a meeting. The automobile that usually followed the organizers bore license number H-763-V. On making an inquiry at the Bureau of Motor Vehicles in Columbus, Gallagher was informed that this license num-

ber was issued to Carl W. Parker, another of the company police.

Spying on organizers was not the only method by which the respondent endeavored to stifle union organization. Resort was had to the Plan as a means of spreading anti-union propaganda. Thus, at a meeting of the General Body in February, Elliott, district manager of the respondent, stated that it was up to each of the representatives to maintain the Plan in operation by going among their constituents and pointing out to them the merits of the Plan over the C. I. O. or any other outside organization.

This method was apparently ineffective. Unsuccessful in their attempts to get an increase in the wage rates, the Representatives, in a resolution adopted by the General Body on March 5, stated, "This Body feels it would be an insult to their intelligence to ask them to go among the men in favor of a plan that has failed to get for them what the employees of the other mills already enjoy." The respondent began, therefore, to pursue a more direct course of action.

On March 13, the day following the election of officers in Republic Lodge 1331, the foundry, a unit within the mechanical department, was suddenly closed. Twelve of the 14 men employed in the foundry were members of the S. W. O. C. and included Thomas White, President of the Lodge, and Charles Fagan, a member of the Grievance Committee. William Manley, superintendent of the mechanical department, testified that the foundry was closed because there was a backlog of orders for Bessemer steel and the iron used at the foundry was required for the Bessemer plant. He further testified that for a period of at least 30 days prior to the closing of the foundry, con-

ferences were held with the heads of the Bessemer plant, and it was decided to discontinue operating the foundry.

This explanation is not convincing in the light of the attendant circumstances. The foundry had been in operation for 20 to 30 years and required only about 600 to 700 tons of iron per month, which amounted to two per cent of the iron used at the Bessemer plant. White testified that at about 3 o'clock in the afternoon of March 13 Manley came into the foundry and said, "Boys, I have bad news for you. Our foundry is being closed down for good." By way of explanation, he stated that he had orders from "up above" and was carrying them out. When Manley made the announcement, the molds in the foundry on which six men had been working since 10 o'clock in the morning were almost ready for pouring. It would have required only about 3 additional hours' work to close the molds and then cast them. Instead of completing the work, the men were ordered to knock the molds out. It is unlikely that the closing of the foundry would have proceeded in such haste and disorderly fashion if it had been made necessary by a shortage of Bessemer steel, and previously discussed at conferences.

We conclude rather that the closing of the foundry, where substantially all the employees belonged to the S. W. O. C., was another step in the continued efforts of the respondent to check the increasing union organization. It was designed to discourage union membership, and was particularly directed against White and Fagan, who were thus discriminated against in regard to the hire and tenure of their employment.[50]

50. On March 15 White, Fagan, and about four others who had been employed in the foundry interviewed McCoy, the Management Representative, regarding their positions. McCoy promised to extend his efforts on their behalf, but informed them that they would have to be hired through general labor. According to White's testimony, this signified being rehired as new men. When the men returned the same afternoon to get their tools, Bill

At about the same time, individual employees in other departments were called in by supervisory officers and questioned about their affiliation with the C. I. O.

Richard Elder, a first helper in the open hearth department, testified that on March 13 George Putnam, the superintendent of the same department, and Jones Cahill, the assistant superintendent, told him that they saw his name on the Executive Committee of Lodge 1331 in a C. I. O. pamphlet, and asked him whether he belonged to the C. I. O. Three days later, Putnam summoned Elder to his office and, according to Elder's testimony, said, "Dick, I always thought you was a good friend of mine . . . it don't look like it when you joined the C. I. O. . . . I just want to tell you that lots of times we have to let good men go that we don't like to lose, on account of union activities. . . . I just wanted to tell you that." Putnam admitted questioning Elder about his C. I. O. membership, although he de-

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Sponsler, the foreman at the Haselton furnace, handed them discharge slips. White objected and stated that he wanted to wait until pay day and look around in the meantime. But Sponsler replied, "I have my orders. You take these slips, and go and get your money."

Two or 3 weeks after the foundry was closed, McCoy secured employment for Fagan on the general labor gang at $5.00 a day. About 2 or 3 weeks thereafter Fagan was transferred to the coke works. Dissatisfied, he asked Manley for a better position. Manley said he had nothing for him. At about the same time, the foreman at the coke works asked Fagan his name and number, and said, "That is all I want to know." Several days later the same foreman told him he did not need him. Fagan returned to the labor gang, but worked only 1 or 2 days a week. Shortly before the strike, he received the vacation to which he was entitled.

Prior to the closing of the foundry, Fagan earned 84½ cents an hour and worked 6 days a week. He has not earned any money since he stopped working on the labor gang.

White was also offered employment on the labor gang, but he refused to accept it, and stated that in view of his years of service he thought he was entitled to a better position. Three or 4 weeks later, White told McCoy that he had been working out of town, but desired to return to the employ of the respondent. McCoy said he had to consult "one fellow" in the plant before White could be hired. Several days later, McCoy told him he could not take him back.

Prior to the closing of the foundry, White earned $44.16 a week. On about March 16 he obtained employment elsewhere and worked for about 6 weeks prior to the strike, commencing again on August 2. He left his employ at the beginning of the strike in order to participate in it as president of Lodge 1331.

nied making the other statements and asserted that he merely warned him that he would be discharged if he did any organizing on company time.

Jerry Simcox, a second helper, testified that on March 13 or 14 Cahill and Putnam told him they understood he was an executive of Lodge 1331 and asked him how long he had been a member of the C. I. O. and how many followers he had.

James Farner, a welder in the line department and a member of the Grievance Committee of Lodge 1331, testified that Graft, the superintendent of the electrical department, asked him why he wanted to join the C. I. O. and get himself mixed up with a "bunch of cheap Bolsheviks." According to Farner's testimony, Graft also stated that the respondent would never recognize the C. I. O. and that the superintendents and heads of each department were to head "this thing off and save all our necks." Graft testified that he merely warned Farner not to solicit employees on company time and on company property.

Joseph Stevens, a second line man, testified that Graft called him and said, ". . . they tell me you belong to the union quite a bit . . . I would rather you keep your nose clean." Graft admitted talking to Stevens about his union activities, but denied making any statements designed to discourage him from continuing his union activities outside of the plant.

As indicated, the respondent's witnesses denied making certain statements intended to discourage union membership. However, the accounts given by the witnesses for the Board are more consistent with the evidence as a whole. Moreover, the respondent's witnesses admit that they questioned the employees regarding their C. I. O. membership. Such action by itself constituted intimidation and coercion of the respondent's employees.

Likewise, at about this time supervisory officers in different departments intensified the campaign of intimidation and coercion by spreading propaganda in favor of the Plan and against the C. I. O. at meetings of the employees called by them for that purpose. Thus, in the middle of March a notice was posted on the bulletin board of the line shop in the electrical department announcing a "safety meeting." However, no safety measures were discussed. According to Stevens' testimony, Graft, the superintendent of the electrical department, spoke as follows:

> "Men, I am here in behalf of the ones that are interested in themselves and to try to convince the ones that are not interested in themselves, to be interested in themselves. . . . Big Chief John L. Lewis . . . has never done anything for the laboring class of people . . . he won't do anything, only get your money and go on with it . . . you won't have any more than you have got, only you will be just out of a job or cause you a lot of trouble, you can't never get over, you lose friends . . . (the Representative Plan) has always give satisfaction . . . All the grievances that we have ever had to settle, have been carried out and treated the men right . . . regardless if every man in here joins a union, we are not going to recognize it. We are not going to sign any contract . . . we are not going to have no closed shop or no collective bargaining."

Stevens' version of Graft's speech is, in substance, supported by the testimony of Farner, who also attended the meeting. Graft denied attacking the C. I. O. and testified as follows:

> "I told them that there had been many pamphlets, booklets circulated in the plant, talking among the men, and articles in the newspaper as to what one would

have to do to hold his job with Republic Steel Corporation. I told them that I had called them together to tell them just exactly what the policy of the Republic Steel Corporation was, and that it was not necessary to join any organization regardless of what anybody said, to get their job or to hold their job.

"If they did join, that was their business. That under the Representative Plan we had been able to make very good strides. That I thought that our policy was the best policy for the men."

Several other meetings of a similar nature were held at various times during the month of April, after Golden, the Regional Director of the S. W. O. C., had written to Girdler regarding a proposed agreement. These meetings were addressed respectively by Manley, superintendent of the mechanical department, Elliott, the district manager, and Levantry, the works manager. In these addresses the C. I. O. was attacked, the Plan was extolled, and the policy of the company with respect to outside organization was emphasized. Thus, Elliott reiterated that the respondent would never sign the C. I. O. or any other outside organization, adding, "Some of you fellows look at me as though to say 'to hell they won't,' but I say they might, but it would be a long, long struggle." Similarly, Levantry remarked, "This Company will never sign up . . . we will shut the mill up and board it up before we will sign with the C. I. O."

On April 19, as set forth above, McCoy announced at a special meeting of the General Body that the respondent was withdrawing financial support from the Plan. As reported in the minutes of this meeting, McCoy stated that "under the Wagner Labor Bill he would not be permitted to carry our time (as he has in the past) for attending meetings and explained that men off duty would not be com-

pensated, but added that *men attending meetings during their regular working hours would be carried on their regular job.*" (Italics supplied). A motion was then passed that a monthly fee of 25 cents be assessed against all members of the Plan, and a treasurer was elected. The only other significant change in the operation of the Plan was that membership was no longer automatic upon voting for a representative, but depended upon signing a membership card. In addition the name of the Plan, as it appears on the membership card, was changed to "Employee Representation Plan."

Shortly thereafter the Representatives began a membership drive in the "new" Plan and solicited employees within the plant and during working hours. The campaign does not appear to have been successful. Ralph Mondora, one of the Representatives, testified that the Representatives tried to form their own organization, financed through the employees," but whatever funds they managed to secure were soon exhausted. Mondora testified also that he handled no grievances after April 19. When employees came to him, he "just turned them down, told them there isn't no such thing."

Plan activity was suddenly revived after the Cleveland conference of May 11 between representatives of the S. W. O. C. and the respondent. At the same time various measures were taken regarding the impending strike.

About a week before the strike, the Employee Representatives met to discuss steps for the prevention of the strike. Levantry, the works manager, was invited to attend. The Representatives voted to circulate through the plant and talk with the men. This was done. In addition, the respondent's supervisors assisted the Employee Representatives in holding meetings during working hours and on the respondent's property regarding the strike. Thus

a meeting, previously announced by the foreman, was held in the machine shop. Butler, the assistant master mechanic, introduced Jack Jones, an Employee Representative. In the course of his speech, Jones said, "We can have an organization of our own in here. We don't need this C. I. O. All they want is your dollar . . . Our representative plan is good enough for us, and I have some cards here for you fellows to sign that want to work. You fellows that want to hold your jobs, sign these cards." He then distributed membership cards in the Plan.

William Cummings, a machinist, testifying for the respondent, stated that shortly before the strike he was given permission by his foreman to dictate a petition to the Mayor of Youngstown for the signature of employees. In substance, the petition read, "We, the undersigned, not wishing to strike, in the event of a strike, ask for police protection to enter and leave the plant." Cummings could not recall on cross-examination where he derived the notion of preparing such a petition. He testified, "I might have gotten the idea from newspaper talk or something I had heard, that when there was a strike, that this had been done; now I don't recall whether or where. I didn't burden my mind particularly." Whether or not Cummings himself conceived the idea of the petition, he prepared it and solicited signatures on the respondent's time and within the plant. Cummings' memory was equally vague regarding the disposition of the petition after he had obtained the signatures thereto. He testified that two men whose names he could not clearly recollect asked him for a copy of the petition and he gave it to them. He also failed to recall the conversation that took place between them.

There is evidence that the same or a similar petition was circulated in other departments. John Guest, an Employee Representative, testified that a clerk in the electrical department phoned and notified him that a petition was

waiting for him in the office and that they were "in a hurry to get it signed." Guest went to the plant and circulated the petition.

On May 19, at a meeting held in the office building of the respondent, the Independent Federation of Republic Employees, Youngstown District, was organized. Guest testified that a notice announcing the meeting was posted on the bulletin board in the masonry department. Mart Murphy, chairman of the General Body under the Plan, presided. Temporary officers were elected. John L. Smith, a mechanic in the electrical department, being elected chairman. Murphy explained that the purpose of the Federation was not to engage in collective bargaining but to cooperate with the Plan. He requested Representatives under the Plan not to run for office in the Federation.

Between the date of its organization and the strike, a number of departmental meetings were held by the Federation on company time. At each meeting John Smith announced from the chair the date of the succeeding meetings. Employees of the department next scheduled to meet were notified, on company time and property, by employees who had attended the preceding meeting. Walters testified that his foreman informed him of a meeting in the mechanical department. He inquired whether attendance was compulsory and the foreman replied, "Manley wants to see you all there." At the meeting, Cummings, a machinist, spoke through a microphone. He launched into a eulogy of the Plan and said, "This outside Union here, they are not for you or me." Another speaker talked about the Plan, the coal fields, the C. I. O., and John L. Lewis. He repeated, "They are not for you, they will do to you fellows just like they did to the fellows in the coal fields. They will double your dues . . . You can't stop them once you sign their cause, then they can do as they please." Murphy pointed to Plan and Federation membership cards and said, "You

fellows that want to work, sign the cards." The pamphlets of the Constitutional Educational League entitled, "*Join the C. I .O. and Help Build a Soviet America,*" were distributed.

Membership in the Federation was solicited not only at meetings but also individually. Michael Krill, an employee in the galvanizing department, testified that he was called in the foreman's office while another employee took over his work. Amal Valley, an Employee Representative, was seated at the foreman's desk. Valley asked Krill whether he wanted to join the Federation and handed him a membership card. He then remarked that there was not much use talking to Krill because he knew he was "100 per cent C. I. O.," but that he was supposed to speak to everyone in the plant. He added that Krill would be "better off" by joining the Federation. Krill was paid for the time so spent.

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3. *Events during the strike*

The strike commenced in Youngstown on the night of May 26. Immediately thereafter the Federation began to sponsor a back-to-work movement. Without consulting the other officers of the Federation or discussing the matter at any meeting, John L. Smith, the chairman, secured an office in the Dollar Bank Building, adjacent to the offices occupied by the Youngstown Sheet and Tube Federation of Employees. Back-to-work petitions were prepared for the signature of employees. Some of the petitions were retained in the office and others were distributed outside. Smith reimbursed the persons canvassing signatures for the gasoline used by them. Postal cards in the following form were dispatched to employees:

"To All Republic Steel Employees:

"If you are desirous of returning to work as soon as possible, stop in at Room No. 212 Dollar Bank Bldg.,

and sign up with the BACK TO WORK movement sponsored by the Independent Federation of Republic Employees.

John L. Smith,
Chairman."

The record does not indicate the source of the funds which were used in carrying on the back-to-work movement. Cummings testified that at one of the Federation meetings, the date of which he could not recall, the question of dues was mentioned and he handed Mart Murphy a dollar. Chester Crosby, ladle crane man, also testified that he paid dues without stating, however, the date of such payment. There is no other evidence, however, that at that time dues were either required or contributed by the employees.

Early in July, after the mills were reopened, the Federation held a meeting in order to combine the Federation with the Plan. As stated by Smith, "The purpose of that meeting was for the Independent Federation of Republic Employees to drop the old Representative Plan or combine the two of them together as one." He testified further,

> "Well, at that time the officers of the Representative Plan resigned and we took over the reins."

It was also decided to "donate" the members under the Plan to the Federation. The testimony of Ralph Mondora is revealing:

> "Q. Had the question ever been put to the members, and whether they wanted to become affiliated with this Independent Federation?
>
> "A. No, sir.
>
> "Q. Whether they wanted to be donated?
>
> "A. No, sir.
>
> "Q. That was an action that officers were taking

without the consent in any way of the members, is that correct?

"A. That is correct."

At a meeting held in the Central Auditorium on July 25, a constitution and bylaws were adopted. Application cards were prepared. Employees were solicited to sign application cards within the plant and on the respondent's time.

Although the new constitution and bylaws purport to make the Federation independent in form of company control, they cannot conceal its real purpose. The record clearly shows the policy of the respondent to perpetuate in its plants an organization subservient to its will and purposes and designed to thwart self-organization on the part of its employees. The Federation is merely a continuation of the Plan under a new guise and is tainted with the same illegality. Before the strike Federation meetings were announced by supervisory employees and held on the respondent's property. Prior to the strike and after the reopening of the mills, employees were solicited to join the Federation on the respondent's time and property.

On the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Employee Representation Plan and the Independent Federtaion of Republic Employees, Youngstown District.

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4. *The refusal to reinstate certain employees*

The mills in Youngstown reopened on June 25. Although the strike was still in progress, many employees returned to work. A number of them were refused reinstatement.

Harry Rigby. Rigby had been in the employ of the respondent for 26 years as an inspector in the electrical department. He joined the C. I. O. late in June 1937. Prior to the strike he was earning about $44 a week.

On Friday, June 25, Rigby and five other inspectors in the same department met and decided to return to work the following Monday. Kling, the foreman, phoned and said he needed men to start the mill at once. Rigby informed him of their decision to return Monday. Pursuant to Graft's instructions, Kling called again and said that if they did not return to work at once they would be replaced. When the men came to the mill on Monday, Kling said, "You fellows ain't got no jobs." Rigby saw Graft on July 13. Graft said, "Rigby, they tell me you are a chronic kicker . . . Charlie Ritchie told me that." Rigby replied that he did not believe that and that he had known Charlie Ritchie for a long time. Graft replied, "Well, I ain't got no more to say to you. You go home and stay home until I call for you." Thereafter, Rigby made attempts to see Graft again but was unsuccessful. Graft testified that the other inspectors admitted they made a mistake in not returning when told to do so and that they were all reinstated.

Rigby did not earn any money between the commencement of the strike and the hearing.

We are of the opinion that Rigby was not reinstated with the other inspectors because of the respondent's belief that he was "a chronic kicker." We find that Rigby was refused reinstatement because of his membership and activity in the union.

John Lazar. Lazar commenced work for the respondent in 1919 and worked regularly until the strike as an inspector in the inspection department. He joined the C. I. O. in April 1937 and served on the picket line for about a

week. Prior to the strike Lazar worked from 42 to 48 hours a week at the rate of 92 cents an hour.

On June 26 Lazar interviewed Bill Conklin, the assistant superintendent, regarding his job. Conklin said he would call him when needed. Lazar returned on June 28 to see Reubendale, the superintendent. Nearly all the other inspectors were there. Reubendale gave them checks and told them to start working. When Lazar's turn came, he said, "No, I don't give you your check yet," and asked him what he was doing in the picket line carrying a stick or a club. Reubendale finally said, "Well, I can't do nothing for you, John, just go on home, when we need you, we will call you."

Lazar spoke to his foreman, Dan Weeks, shortly after the Fourth of July. Weeks said, "Well, John, I am sorry to lose you from down here. I like to have you back, but I can't do nothing for you. You have got to see Mr. Reubendale." Lazar called Reubendale on the telephone repeatedly and was always told to call "the last of the week" or the "first of the week." On August 9 Reubendale said to him, "I can't do nothing for you, John. Why don't you go in the C. I. O. . . They will help you out."

Lazar has earned $2.50 since the beginning of the strike.

It is clear that Lazar was refused reinstatement because of his connection with the union and of his activity in the strike. The respondent apparently attempts to justify this discrimination on the ground that Lazar carried a stick or a club in the picket line. For the reasons discussed hereinafter we are of the opinion that, under the circumstances of the case, such conduct upon the part of Lazar, if true, would not warrant the respondent in refusing to reemploy him.

Michael Krill. Krill worked continuously for the respondent from July 1936 until the strike. Prior to the

strike he was employed in the galvanizing department a was earning from $6.75 to $7.00 a day. He joined the C. O. in January 1937, acted as a volunteer organizer, a served on the picket line.

At about 6 p. m. on June 28, Krill returned to the pla to seek his job. Linden, the foreman, told him to come ba an hour later. Krill inquired whether it would be sat factory if he returned the following morning since he had go back home, change his clothes and get his glasses. Lind replied that it would be all right, provided he returned pri to the dead line, but he did not know when it was. Wh Krill came early the following morning, Linden said that was too late and that the dead line was already in effe Linden also stated that he was aware of the time of t dead line the previous night, but did not want to appr him of it. Linden then suggested that he register at t employment office.

Krill called again in July, and Linden promised to se his number to the employment office if he was needed. August 13 Linden told Krill that he turned his number but that there was something wrong. He then asked h whether he was on the picket line and said they probab had his picture in the main office.

Krill has earned about $25.00 since the strike.

We find that Krill was refused reinstatement because his connection with the union and his assistance to t union during the strike.

Balare Chismus. Chismus started work for the resp dent on May 18, 1936. Prior to the strike he worked as laborer in the bar mill. He joined the C. I. O. on May and served on the picket line.

Chismus returned to the mill on June 27 or 28 to quire about his job. The turn foreman asked him, "Why

you monkey around the C. I. O.," and told him to wait for Warnock, the general foreman. Warnock said he did not have anything for him then and told him to come back in a few days. On a subsequent occasion Warnock advised him to go to the employment office. At the employment office he was told that "there is nothing to do now." He made another attempt to see Rose, the employment manager, but was prevented by the company police. According to Warnock's testimony, Chismus admitted to him that he was arrested on the Market Street bridge on the night of June 10, and for this reason he was denied reinstatement. Warnock did not assert that Chismus was guilty of any acts of violence. Warnock further admitted that as far as he knew Chismus did not carry a club on the picket line.

Since the strike Chismus has earned about $68.00.

We find that Chismus was refused reinstatement because of his affiliation with the union and his assistance to the union during the strike.[51]

William A. Haren. Haren commenced work for the respondent in July 1926, and was employed as a mixer crane man. Prior to the strike he worked 40 to 48 hours a week at 77½ cents an hour. He joined the C. I. O. on August 6 1936.

On June 29 Haren went to the mill to inquire about his job. Charlie Ritchie, the foreman, asked him, "Where is your club," and said, "You have caused a lot of trouble around here. You have agitated . . . If I need you, I will call you." Haren asked, "That means that I am fired?" Ritchie replied, "No, we don't fire anyone."

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51. In the respondent's offer of proof filed with the Board on March 28, 1937, it is stated that on or about October 20, 1937, Chismus pleaded guilty to a charge of rioting. For the reasons discussed hereafter we are of the opinion that, under the circumstances of the case, such offense is not a bar to his reinstatement.

Two or 3 weeks later Haren returned to the mill again. Pursuant to a policeman's instructions Haren went to the employment office. Haren told Rose, the employment manager, that he wanted to register. Rose said, "What do you mean, register? How long do you fellows think we are going to hold your jobs here—forever? Didn't you know that the gates had opened 2 or 3 weeks ago?" Haren testified that he thereafter phoned Graft and received the reply, "We don't have anything for you, Bill . . . We will notify you when we need you. We are all filled up."

Graft testified that he refused to reinstate Haren because he had an affidavit from one of the employees to the effect that Haren was on the picket line carrying a club. Graft does not know either the size of the club or the length of time Haren carried it.

Haren has not earned any money since the strike.

We find that Haren was refused reinstatement because of his connection with the union and his activity in the strike. As in the case of Lazar, the respondent was not justified in refusing to reemploy because of his alleged activity on the picket line.

Charles Neverdusky. Neverdusky began to work for the respondent on March 9, 1936. Prior to the strike he was employed as a hooker in the cut and lap shipping department and earned about $7.00 a day. He joined the C. I. O. on January 9, 1937.

Neverdusky was out of town on June 28, the date of the dead line in his department. On June 30 he returned and interviewed Rose at the employment office. Rose was unable to find his number in the files and said, "You are off the pay roll, altogether . . . You have to get rehired." Neverdusky came back the following day and showed Rose his pay stub. Rose made another unsuccessful attempt to

find his number, and could not tell Neverdusky the reason for its absence. The latter persisted. ". . . who else but you could give me a reason? They would have to give you a reason for taking me off the pay roll." Rose said, "Who the hell am I to give you a reason? Get the hell out of here."

At the end of July or early in August, Neverdusky spoke to McCoy, the Management Representative under the Plan, regarding his job. McCoy said to him, "You are one of these guys, C. I. O. men that was on picket line carrying a club?" Neverdusky denied that he carried a club. McCoy said, "Well, you are one of these smart guys went down and filed with the Labor Board." To Neverdusky's query, "So that is where we stand?" McCoy replied, "That is exactly where you stand."

Neverdusky has earned $12.00 since the strike.

We find that Neverdusky was refused reinstatement because of his connection with the union, his assistance to the union during the strike, and his filing a charge with the Board.

Anthony Martin De Long. Anthony Martin De Long was employed as a hooker in the electric weld department from April 1935 until the strike. Prior to the strike he earned about $5.00 a day. He joined the C. I. O. in April 1937 and served on the picket line.

The dead line in De Long's department was June 28. De Long went to the employment office on June 30. Rose checked his number and said, "I don't believe there is anything here for you now . . . We will call you when we need you." De Long inquired how soon that would be. Rose replied, "I don't know, come back New Year's."

On July 3 De Long spoke to Campbell, the general foreman of the department. Campbell told him that he had a

clear record at the electric weld and he liked his work but he did not know how he could get back. He suggested that he see Roy Case, the superintendent. De Long testified that in the course of his conversation with Case on July 5, Campbell came running from the other side of the office and said, "Roy, do you know who this boy is? . . . His name is Tony De Long." The expression on Case's face suddenly changed and he told De Long the work in the mill was slack, that there was nothing for him. De Long remarked, "Well, I can see that I am not wanted around here." Case replied, "Oh, yes, you are wanted around here. The men can use you. You are a good worker, and all that. The only thing you have to do is to keep walking to the employment office."

De Long repeatedly went to the employment office, but the police prevented him from seeing Rose. The police were stationed in front of the building. One of them had lists of numbers and names. Employees whose numbers appeared on the lists were permitted to see Rose. The others were told to come back the next day. Discouraged with his fruitless attempts at the employment office, De Long finally succeeded in contacting Campbell again. De Long said he wanted to be taken off the "merry-go-round" and to be told if he had any chances of returning to work. In one breath, Campbell said, "No, you are not fired," and in the next, ". . . You have to keep . . . walking down to the employment office. You have to be rehired."

Shortly thereafter De Long spoke with McCoy who told him, "You will have to wait until the case is over with the National Labor Board before you can go back to work."

We find that De Long was refused reinstatement because of his connection with the union and his assistance to the union during the strike.

D. WARREN

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Warren District of the respondent, comprising the Warren, Niles, and Trumbull Cliffs plants, was adopted in June 1933 and amended in May 1934. Shortly after the constitutionality of the Act was upheld, the Employees' Independent Association, herein called the Association, was formed. It purported to be a new organization and independent of the respondent. The activities of the Association will be discussed hereafter.

The similarity of the Warren Plan to the Plan at Massillon, Canton, and Youngstown renders it unnecessary to describe it fully. It is sufficient to indicate certain circumstances and incidents reflecting its domination by the respondent.

The Plan was initiated and sponsored by the respondent. Its adoption was never submitted to a vote of the employees. Ernest Webb, one of the Employee Representatives, testified that he was first apprised of the Plan at a meeting in June 1933 held in the office of the superintendent of the hot mill. Elliott, who was then district manager of Warren, explained the purpose of the Plan. The respondent bore the expenses of all the meetings and elections, both of which took place on company time and property, and of the entire functioning of the Plan. The representatives were paid their regular salaries for all time devoted to the Plan. Ed Mulligan, the chairman of the General Body of Employee Representatives, devoted most of his time to Plan work and was assigned an office for such work.

The record indicates that the elections themselves were not always free of management influence. Webb tes-

tified that prior to the election of the Chairman of the General Body in 1934, Mulligan, who was a candidate for the office, said to him, "Well, using some of the superintendents to probably bring a little pressure and a little politics, why we will make out all right."

The experience of Webb as chairman of Joint Committee No. 2, in charge of wages, employment, schedules and working conditions, is significant. Out of 17 requests for wage increases which were presented to the Committee during a period of 3 years, the employees won two and lost 15. The cases were lost as a result of a tie vote between the Employee Representatives and the Company Representatives both in Joint Committee No. 2 and in the Appeals Committee.

From the evidence as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation, Warren District, and has contributed financial and other support to it.

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2. *Events preceding the strike*

The circumstances surrounding the discharge of Richard John Green, a breaker operator in the hot strip finishing department, serve to illustrate the activities of the respondent prior to May 1937 when the anti-union drive reached its height.

Green joined the C. I. O. on March 2, 1937. On March 6 Paige, his foreman, summoned him to his office. As the office was occupied, Green was taken to the mechanic's shed where he was alone with the foreman. Green testified as follows:

> "He said: 'I called you in here, I want to ask you something. I want you to tell me the truth.' I said: 'I

always have told you the truth, Ralph.' He said: 'I know that, that's why I called you in here'. He said: 'I hear your buddy, Jim Airwyke, is signing up members in the C. I. O.' I said: 'Yes, as a matter of fact, he signed me up'.

"He said: 'What did you want to do that for?' I said: 'We men around here are not satisfied with the Company Union Plan. As it is,' I said, 'we have no representation at all'.

"And he said: 'You have been long enough to know this Company's policy towards outside unions'. He said: 'You take my warning and get out of it, and everything will be O. K.' He said: 'I like you, and I don't want to see anything happen to you'."

Paige further questioned Green regarding his attendance of C. I. O. meetings and admonished him "to stay away from them".

On March 21 Green was called to the office of Minahan, the superintendent. Minahan showed Green certain defective steel handled by him and said, "I am going to have to lay you off, and seeing that you have been laid off twice before, I will have to let you go." Green explained that the steel turned out "wavy" because the rolls were worn in the machine, and that the foreman was aware of it but said it did not "hurt anything". Green also explained to Minahan the reasons for his previous lay-offs.[52] Minahan said, "I could give you another chance, but you have been talk-

52. Green testified that his first lay-off was due to the "scratching" of some steel for which another operator was responsible, and that he submitted to a lay-off for 3 days rather than cause any trouble. The second lay-off occurred in March 1936. On that occasion Green and several other operators were instructed by the foreman to shovel coke because there was no immediate work on the breakers. Upon the refusal of the men to do so, the foreman sent them home and told them to stay home until he called for them. However, when the men explained the facts to Minahan a few days thereafter, he said that they would have lost no time if he had been informed about the incident immediately.

ing too much about the union, around here . . . if you had been any ordinary sweeper, there would have been some excuse for you, but you are more intelligent and should have known better. . . . As far as I am concerned, I am through with you."

Shortly thereafter, Green requested Glenn Dugan, an Employee Representative, to take action in his behalf. Dugan was doubtful as to the possibility of Green's reinstatement, since he had been attending C. I. O. meetings. A week later Dugan informed Green that Minahan even refused to discuss his case. According to Green's testimony, Dugan also said that "he could not understand the Company's policy in putting statements in the paper that any man was free to join any union of his own choice and then when he did so, then they fired him for it".

Unable to obtain any results through the Plan, Green communicated with Mayo, the C. I. O. Regional Director. Mayo secured the services of the Committee of Trumbull Lodge No. 73, and a meeting was arranged with officials of the respondent. The latter refused to give a definite answer.

About April 24 an officer of the respondent, McClain, told the vice president of Trumbull Lodge that although he did not make any promises, he might consider reinstating Green but not James Airwyke or Arthur Scott, who were also discharged. On the same day the men decided to submit their case for determination by the Board. Several days later McClain called Green to his office to have "a man to man" talk with him. He said,"I hate to see a young fellow like you get off on the wrong foot with the wrong crowd", and asked him whether he wanted to return to work. Green was willing to return provided he was given back pay. Minahan said, "I will take you to the Labor Board and back four times before I give you your back

pay". About May 3 or 4, Green decided to return to work without the back pay. He was asked to promise, however, not to talk about the union any more. Paige also told him that if he had heeded his warning he "would have never gotten into this trouble".[53]

Shortly after the constitutionality of the Act was upheld, the Employees' Independent Association was formed. Leaflets concerning the Association and membership cards were prepared for distribution. The leaflets were addressed to the employees of the Warren District and were signed by the members of a Committee, styled the "Reorganizing Committee for the Employees Independent Association".[54] Ed Mulligan, Chairman of the General Body under the Plan, was also chairman of this Committee. The leaflet indicates that the Association was intended to function pursuant to the provisions of the Plan as revised in March 1937. Presumably the reference is to the revision of the Plan adopted April 22, 1937, which has been described above.

An intensive Association membership drive began in May, and was conducted with the active support and assistance of the respondent's supervisory employees.

On about May 1, Mulligan undertook to mail a great number of leaflets and membership cards to employees. He

53. Green worked until the strike. During the strike Green was refused reinstatement. See *infra*.

54. The leaflet reads in part as follows:

"In order that this plan can function in compliance with the various sections of the National Labor Relations Act (otherwise known as the Wagner Act), as regards rates of pay, wages, hours of employment or other conditions of employment, the plan was amended in March 1937 by the duly elected employee representatives.

"Paragraph 2, Section VIII, of the Wagner Act, recently held constitutional by the Supreme Court, provides, however, that an employer cannot contribute financial or other support to any labor organization. It is therefore necessary to secure financial support in order that our revised plan of collective bargaining can continue.

"If it is your desire to continue collective bargaining through a group of employee representatives chosen from among Republic employees, this can be accomplished by accepting membership in the EMPLOYES INDEPENDENT ASSOCIATION at a cost of Four Dollars ($4.00) per year . . . "

performed this work in his office in the respondent's hospital building. Eddie Werner, assistant to the employment manager, helped Mulligan by folding the leaflets and cards, placing them in envelopes, and sealing them. Mulligan told Webb, an Employee Representative, that he had to mail about 5600 leaflets and cards and believed he could obtain the necessary money from the Athletic fund. This fund, which was under the supervision of a Plan committee, consisted of gate receipts of various sport events held on the respondent's ball grounds and of the rentals charged outside parties for the use of such grounds.

The membership campaign was not altogether successful. The employees were reluctant to sign the cards. On about May 12 McKinney, a superintendent, asked Webb why none of his men signed Association membership cards. Webb testified:

> "I said: 'How do you know?' 'Why,' he said, 'Mulligan told me'. I said: 'What business did he have telling you?' I said: 'This is supposed to be a secret order.' 'Well' he says, 'You will have to go out and talk to them, talk to these men.' He said: 'You are a free lance, you get around all over the plant'."

Webb refused to comply with McKinney's request, saying, "You know that the Wagner Bill has been passed". McKinney suggested that Webb consult Mulligan about it. Mulligan was absent from his office at that time. While Webb was waiting, Frank Neale, assistant to the master mechanic, entered and examined the membership cards in Mulligan's files. Shortly thereafter, Lowry, the master mechanic's chief clerk, came in with a handful of membership cards and deposited them with the other cards. Several days before the strike, McKinney again complained that he was in a "tough spot" because the men under his supervision had not returned the membership cards.

A number of foremen were themselves directly engaged in soliciting members for the Association during working hours and on the respondent's time. Thus about May 12, Michel, the general labor foreman, asked Eli Parkovich, a foreman in the labor department, whether he joined the "company union", and told him that ". . . everybody wants to work, got to join the company union". He then instructed him to take down the names and numbers of the men in his gang who refused to sign membership cards.

About May 14 Taylor, the foreman of the blast furnace, approached Ernest Garnett, an operator of a "lorry" car in the stock house, and inquired why he failed to return the Association card which had previously been mailed to him. Garnett replied that he already belonged to the C. I. O. Taylor then said, "If you know what is good for you, you will sign that". On the same and subsequent days, Kerwin, the superintendent of the blast furnace, engaged Garnett in conversation regarding the C. I. O.

William M. Cain, a roll turner, testified that about May 15, Baldwin, the foreman of the roll turner department, approached him while he was working and asked him what he thought about the "company union". When Cain expressed his opinion, Baldwin said, "I don't give a damn what you think of the company union, that don't interest me at all. I am on the spot. The roll turners at the Niles plant have signed up 100 per cent for the company union. The roll turners at the strip plant, fifty per cent of them have signed for the company union. I have eight men here, not one man has signed for me, and I am on the spot, and I think you fellows owe it to me to sign that card". Baldwin then told him not to worry about the dues because "the company will take care of that".

George Carter, a locomotive engineer, testified that a few days before the strike, Miller, his foreman, asked him

and another engineer whether they received a letter with a white card. Carter argued that it would be useless to pay $4.00 a year to join an organization that was of no benefit to him. Miller told him to forget the $4.00 and explained that there was nothing on the membership card regarding the payment of dues. When Carter refused to sign the card, Miller launched into an attack on the C. I. O., saying that it consisted of a "bunch of communists and bolsheviks".

On the basis of all the evidence we find that the respondent dominated and interfered with the Employees' Independent Association, Warren District, and contributed support to it.

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3. *The strike*

The strike began at Warren on the night of May 26. Various preparations were made to meet it on that day. Richard Green testified that at the end of his shift on that night he joined the "hot mill" men who were on their way to the strip mill in order to urge the strip mill employees to join the strike. However, on the track between the strip mill and the sheet and tin department there were lined up a couple of hundred "loyal" workers and "bosses" armed with sledge hammers, pikes, and other weapons. As the hot mill men were going through the sheet and tin department, Ginert, the superintendent, yelled at them, "Come on, you sons-of-bitches, we are waiting for you". Not desiring to create any trouble, the men decided to leave the mill.

As the employees in the cold strip shipping department were ready to leave at 11 o'clock, Bill Thompson, the "boss" of the department, said, "You have to stay here to protect your jobs. . . . If you go home, you won't have any more jobs in this department". John Riffle and Albert Lewis, impelled by the fear of losing their job, remained in the plant. They slept on the floor. Next morning they were

given an order for the restaurant. The only supply of food in the restaurant consisted of hamburger sandwiches and coffee. In view of the number of people who had to be served, the hamburger was not properly fried and both Lewis and Riffle became ill. They went home the same day.

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4. *The refusal to reinstate Green and Hite*

About June 25 or 26 employees began to return to work. Richard Green and Hallie Philip Hite, it is alleged in the complaint, were refused reinstatement because of their union affiliation.

Richard Green. Green was actively engaged during the strike in transporting strikers from the S. W. O. C. headquarters to the plant for picketing duty. On June 25 or 26 he went to the Warner Hotel where, he had been informed, passes were distributed enabling employees to get through the National Guard lines and enter the plant. In the lobby Green met McClain, who laughed at him and motioned to him to get out. Upon further inquiry, he was directed to the mezzanine floor where Mulligan was seated at a little table and had several lists in front of him. He informed Green that his name was on the ineligible list and refused to give him a pass. Green testified that there were two others present, St. Clair and Blanchard Bolton. Bolton explained to Mulligan that he was on vacation when the strike commenced, and was thereupon issued a pass. St. Clair was unsuccessful.

Prior to the strike, Green earned about $9.50 a day. Since the strike he was employed for one day as a deputy sheriff and 2 weeks as an electric welder at the American Welding Company. His check for the first week was $26.41.

We find that Green was refused reinstatement because of his connection with the union and his assistance to the union during the strike.

Hallie Philip Hite had been in the employ of the respondent since September 1923. Prior to the strike he was a yard conductor and "dumper" at the Trumbull Cliff Furnace, and earned $1.04 an hour with time and a half for working over 40 hours a week. Hite joined the C. I. O. on May 27 and served on the picket line.

Shortly before the strike, M. R. Martin, the traffic manager, and Kilcanney, the foreman, asked him to sign an Association membership card. Hite refused.

On about June 25 or 26 Hite was informed by Lavelle, one of the respondent's engineers, that the men were returning to work. The same day Hite saw Kilcanney and inquired about his job. Kilcanney said, ". . . if you go back to work, you have got to go back as a new man, rehire, that is, if they want to take you". Hite replied that he would never return as a new man after 14 years in the respondent's service. Hite made no further attempts to secure a job. According to his testimony, it would have been useless, since Kilcanney told him he had "the inside dope".

Hite has not earned any money since the strike.

We find that Hite was refused reinstatement because of his connection with the union and his activity in the strike.

E. Cleveland

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Cleveland District was a continuation of the Plan which had been established in the Corrigan, McKinney Steel Company in

1933.[55] In March 1937 the bylaws were amended, apparently pursuant to the revision proposed at the Cleveland conferences of the Central Council of Employee Representatives. This revision, as already pointed out, contained minor changes only and in no way removed the respondent's control over the Plan. Shortly after the constitutionality of the Act was upheld by the Supreme Court, Wakefield, the Management Representative, announced at a meeting of the General Committee of the Employee Representatives [56] that the respondent would no longer be able to contribute any financial support to the Plan. Thereupon the Employee Representatives formed the Employees' Representative Association, a new organization which purported to be independent, of the respondent. The formation and activities of the Association are further discussed hereafter.

The Plan in the Cleveland District up until April 12, 1937, was similar in structure and operation to the Plan in Massillon and the other districts. It is therefore unnecessary to describe it at length. It is sufficient to state that the employees were never given an opportunity to vote on the adoption of the Plan; that the respondent defrayed the expenses of all the meetings and elections, both of which were held on the respondent's time and property, of clerical and stenographic services, printing, and of the entire functioning of the Plan; and that the representatives were compensated by the respondent for all time spent in connection with the Plan whether during working hours or outside of working hours.[57]

55. The assets and properties of the Corrigan, McKinney Steel Company were acquired by the respondent in September 1935. In April 1936 the name of the Corrigan, McKinney Steel Company. appearing in the by-laws of the Plan, was replaced by "Republic Steel Corporation, Cleveland District."

56. The General Committee as set up in the bylaws of the Cleveland Plan corresponds to the "General Body" in the other districts, and is, in fact, referred to by witnesses as the "General Body."

57. The following incident serves as an illustration of the operation of the Plan: John Exall, a chipper at the Corrigan, McKinney plant, testified

We find that the respondent dominated and interfered with the formation and administration of the Plan of Employee Representation at its Cleveland District.

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2. *Events preceding the strike*

The campaign to organize the respondent's employees in Cleveland began in June 1936. At that time, there not being any Lodge set up for the respondent's Cleveland employees, they began to join the Otis Steel Lodge.[58] The men were at first compelled to hold their meetings secretly.

As has already been stated, the respondent met the announcement of the campaign for the unionization of steel workers by its statement of July 2, 1936. Immediately thereafter it began a campaign to discourage and thwart organization.

(a) *The discharges*

Almost from the very first the respondent resorted to the weapon of discharges. We will take up in order those individuals named in the complaint as having been discriminated against for union activity. The respondent introduced no evidence to rebut testimony that the discharge of these men constituted unfair labor practices.

Thomas Cikah. Cikah commenced to work at the Corrigan, McKinney plant in 1925. Prior to his discharge he was employed as a locomotive engineer in the coke plant.

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that in the 1936 elections for Representatives he was defeated by five or six votes. He subsequently learned that Peters, the superintendent of the department, urged the employees not to vote for him, saying, "Don't vote for this man. He is a radical. He is a Communist. Even if he get elected, we going to fire him." To one employee who praised Exall as being a "good man" Peters said, "If you think he is a good man, then you are a Communist yourself."

58. The Otis Steel Lodge had been established by the Amalgamated for the employees of the Otis Steel Company.

Cikah testified that during July and subsequent months company police watched the beer parlor operated by his wife near the plant, which was frequented by Balint, a C. I. O. organizer, and others connected with the C. I. O. Cikah joined the Union on July 2, 1936. Shortly thereafter Wall, the superintendent, summoned him to his office and inquired whether he belonged to any union. When Cikah replied that he did not, Wall advised him: "For . . . sake, don't join a union. They are no good. They don't give you anything."

Cikah was discharged on July 9, 1936. His foreman told him he was discharged because of his failure to stop the smoke and put out fires in the ovens under his supervision. Cikah testified, however, that he was not at fault in this regard and explained that while he was running the locomotive he could not do anything else. He also testified that there had previously been no complaints concerning his work. Furthermore, when he was reinstated shortly before the strike, he was assigned to his old position. This reinstatement took place on May 14, 1937, after Cikah had filed a charge with the Board.

At the time of his discharge Cikah was earning 59½ cents an hour. Since then the rates for locomotive engineers have been raised to 74 cents an hour. He did not earn any money between the date of his discharge and reinstatement.

On the basis of the whole record we find that Cikah was discharged because of his membership and activity in the Union.

John Popik. With the exception of a lay-off of five or six months, Popik worked as a rigger at the Corrigan, McKinney plant continuously from February 6, 1934, until his discharge on August 10, 1936.

Popik joined the C. I. O. on about August 3, 1936. On August 9 he was directed to report to the office of Agnew, the master mechanic, who questioned him regarding his membership in the C. I. O., and remarked, "Don't you know that this plant (is) never going to be organized? . . . this company got a lot of money and (is) going to break any Union in the world." On the following day Agnew again summoned Popik and said, "I got news for you . . . I got to let you go. That is the news." Shortly thereafter Popik saw Krause, the employment manager, and inquired whether his C. I. O. membership was the reason for his lay-off. In reply Krause put his fingers to his lips and said, "Sh-h-h."

After his discharge Popik filed a charge with the Board. On May 8, 1937, he received a card from the respondent directing him to report to the main office. Krause then reinstated him to his former position as a rigger.

At the time of his discharge Popik was earning 55 cents an hour plus a tonnage bonus. Since then the hourly rate for riggers has been increased to 72 and 75 cents. Between the date of his discharge and reinstatement, Popik earned $50 or $75 hauling coal in his own truck.

Upon the entire record in the case, we find that Popik was discharged because of his membership in the Union.

Frank Pirichy. Pirichy worked for the respondent off and on from May 1934 until his discharge in the latter part of August. For about six or seven weeks prior to his discharge he was employed as a chipper in the chipping department. Pirichy joined the C. I. O. on July 1 or 2, 1936, and did considerable organization work among the respondent's employees. He testified that he succeeded in organizing about 100 men in the chipping department.

Late in August, when Pirichy reported to work on his shift, he was unable to find his time card on the rack. Upon

inquiry, it turned out that the company policeman in attendance was in possession of Pirichy's card together with five or six others. Pursuant to the policeman's suggestion, Pirichy contacted Krause the following morning. Krause informed him that he had received orders from George Belline,[59] the superintendent of the chipping department, to dismiss him. Krause was unable to give him any further explanation, and stated, "according to my record, you perfectly O. K. . . . I have no complaint against you. I don't know what it is all about."

Pirichy testified that the words "no work" were written on the discharge slip handed to him. Nevertheless, about 15 or 20 new men were hired in his department during the same week. Again, when Pirichy returned to the employment office about two weeks later, he witnessed the hiring of additional men. His own request for employment, however, was repeatedly turned down with the reply, "We have nothing for you."

Pirichy filed a charge with the Board about a week after his discharge. On May 11 he was reinstated to his former position and worked until the strike. At the time of his discharge he was earning 60 or 62 cents an hour. The rates for chippers have since that time been raised to 72 cents an hour. After his discharge Pirichy was employed by the W. P. A. for a period of four and a half months and earned $71 a month.

On the basis of all the evidence we find that Pirichy was discharged because of his union membership and activity.

George Troyanovich. Troyanovich began to work at the Corrigan McKinney plant on September 3, 1925. At the time of his discharge on August 27, 1936, he was employed as a bed chain man.

59. Also referred to as George Bellew and George Balleau.

Troyanovich became a member of Otis Steel Lodge in the latter part of June. On July 24 he met two organizers from the Otis Steel Company, Casey and Murphy, who invited him in their car which was parked on Broadway and engaged him in conversation. The conversation centered about the circumstance that the respondent's employees were being "called in" and questioned by their bosses and by Jones, the captain of the company police. Casey and Murphy expressed the belief that Lohman, an Employee Representative in the coke department, was furnishing the respondent with information. Upon leaving the two men, Troyanovich encountered Sam Naletrich, a loaderman in the coke department, who repeated that men were being called in. Naletrich then warned him, "Watch yourself, here comes the company stool." Troyanovich looked around, and saw a man coming slowly down the street. Naletrich remarked, "That fellow hangs around the beer joint all the time . . . he turns in fellows that sign up." Troyanovich then went to the office where he received his vacation money. On his way out, he noticed that the man who had been pointed out to him by Naletrich was talking to a company policeman.

On the same day Troyanovich was ordered to report to the main office where Wakefield, the Management Representative, and Captain Jones questioned him concerning his conversation with the two men on Broadway. Believing that a denial would be futile, Troyanovich admitted that they were two organizers from the Otis Steel Company. Captain Jones thereupon launched into an attack against the C. I. O. and accused John Lewis of being a racketeer and "out to make money for himself." He admonished Troyanovich to stay away from the two Otis Steel men if he knew what was good for him. When Troyanovich stated that he was "neutral" on the union question, Wakefield asserted that it is impossible to be neutral and that one must be either

for or against the company. Troyanovich was then urged to influence the men in favor of the Plan and against the C. I. O.

Troyanovich left on his vacation the same afternoon. When he returned his house was watched by men who arrived in a car and parked on the other side of the street. Upon his leaving the house, the car also disappeared.

Two or three days after he returned from his vacation Troyanovich was summoned to the office of Zimmerman, the superintendent of the order and shipping department. Shriber, assistant to the district manager, talked to him. Troyanovich testified:

> "Well, he first said that he was very much disappointed in me, and I wanted to know just what he meant. He didn't get to the point. And then he said, 'You know . . . they are going to start organizing this union down here . . . there is going to be a lot of trouble . . . We have had intentions of putting in a new mill here in Cleveland, . . . if this threat of the union drive is going to go through, we might change our minds and not put the mill in here, . . . you know there is going to be some good jobs when that mill goes up . . . you look like a pretty intelligent fellow . . . if you work with us why . . . we will see that you will get a good job.'
>
> And he further stated . . . 'You know, the Republic Steel has the reputation of being very good to its friends, and damned ruthless to its enemies . . .' "

The same day Balint, the C. I. O. organizer, told Troyanovich that he was slated to be discharged. He explained that Lohman had signed an affidavit confessing that he was compensated by the respondent for furnishing information regarding employees who had joined the C. I. O.

When Troyanovich reported for work on August 27, Robbins, the chief chipper, stopped him and stated that his work had been unsatisfactory. He refused to explain any further. He said, "Charlie Barrie has got the proof," and added, "You have been a bad influence around here in the past two months."

Thereafter Troyanovich requested the Employee Representatives to take action in his behalf. An interview with Wakefield proved fruitless. He stated that they had enough to "hang" Troyanovich and would never rehire him. The Employee Representatives then appointed a committee to see Barrie and ascertain the facts relative to the discharge of Troyanovich. Barrie informed the committee that about two months before he had been instructed by his "superiors" to watch Troyanovich, that he had on numerous occasions observed him conversing with a group of five or six men, and that he turned him in because he was "suspecting that the man was talking about the Union and about Communism."

The matter was then submitted to the General Committee at a meeting held on September 8, 1936, and a motion was unanimously adopted recommending the reinstatement of Troyanovich. John Exall, an Employee Representative, testified that about a week after the meeting Carpenter called him into his office, upbraided him for "raising hell" about Troyanovich, and stated that he was a Communist and would never be taken back.

At the time of his discharge Troyanovich averaged over $5 a day and worked six or seven days a week. On September 30, 1936, he secured employment elsewhere at loading coal and worked for three months, earning $26.30 weekly. Since the first of April his earnings averaged only between $5 and $10 a week.

Upon all the evidence in this case, we find that Troyanovich was discharged because of his membership in the Union.

Michael Naletrich. Naletrich worked at the Corrigan, McKinney plant continuously from 1917 until his discharge on September 9, 1936. At the time of his discharge he was employed as a loaderman in the coke department. He testified that he had never been laid off and that his work had at all times been satisfactory.

Naletrich joined the C. I. O. in July 1936, and was active in organizing employees. In the middle of August he took 10 employees to Cikah's beer parlor where they were signed up by Fred Korecky, a speed car operator at the Corrigan, McKinney plant, and recording secretary of Lodge 1098, an S. W. O. C. Lodge. Naletrich testified that he was watched by men from the respondent's office as he entered the beer parlor with the employees. On about September 6 he was directed to report to the superintendent of the coke plant, Wall, who glanced at a slip of paper in his hand and inquired whether Naletrich had joined the C. I. O. Naletrich denied his membership. Wall warned him, "Better don't join." After this conversation Naletrich was closely watched by his foreman.

On September 9 Naletrich was discharged. By way of explanation his foreman told him that he had made a "big mistake" a month ago when he had pushed the coke before the whistle blew. Naletrich testified that he had already been penalized for his mistake by a one-day lay-off, and that others had committed the same error but were never discharged as a result. After his discharge he repeatedly tried to get his job back but was unsuccessful.

Naletrich filed a charge with the Board in March 1937. On May 6 he received a card from the respondent asking him to return to work. For 3 days he was assigned to load-

ing doors and then he was reinstated to his former position.

At the time of his discharge Naletrich was working at the rate of 59 cents an hour. For the first 3 days after his return to work he earned 57 cents an hour and thereafter 74 cents, which constituted the new rate for his former job.

Upon all the evidence we find that Naletrich was discharged because of his membership and activities in the Union.

Fred Korecky. Korecky worked at the Corrigan, McKinney plant more or less regularly from 1930 until his discharge on December 19, 1936. During the first two and a half years he was a pump operator. Then he was employed as a speed or service car helper and was finally promoted to the position of service car operator. He testified that as far as he knew his work had always been satisfactory.

Korecky joined Lodge 1098 on July 26, 1936, and was elected recording secretary a month later. He was active in organization work among the employees. As already noted, in the middle of August he signed up the employees brought into Cikah's beer parlor by Naletrich. During the month of November Korecky was on different occasions questioned by Wakefield, the Management Representative, and Tull, the electrical superintendent, regarding his C. I. O. membership. Korecky denied that he had joined the C. I. O. He testified that after these conversations took place, his house was watched by a man, whom he recognized as a sergeant or lieutenant in the company police and whom he had previously seen in the mill.

On December 19 Korecky was laid off. In accordance with the suggestion of Homer Kerr, the turn foreman, he reported the following morning to the employment office where he saw six laborers being hired. Korecky implored

Krause to give him anything at all, even a laborer's job. Krause's reply was, "No." Korecky insisted, "Why you just hired six men out there. I seen them come in here and I seen you signing them up now." Krause said, "Oh, never mind."

Although it is not entirely clear, Korecky's testimony on cross-examination indicates that the occasion for Korecky's lay-off was furnished by the elimination at that time of gasoline locomotives from the equipment used in the service car work and the substitution of gasoline trucks. The service car gang consisted of Korecky and seven other men who had all joined the C. I. O. and were laid off at the same time. Korecky testified that all these men were subsequently taken back although he did not know on what dates. Korecky further testified that he was sixth in seniority in the service car gang but had greater seniority in the electrical department.

Korecky's case was discussed at a meeting of the General Committee of Employee Representatives on January 5, 1937. Korecky, who was called in to explain the facts of his case, stated that he had seniority rights in the electrical department where men were being hired on the pumps and on the construction gang. He was later informed by John Exall, one of the Representatives, that the General Committee recommended his reinstatement by unanimous vote. However, no further action was taken in the matter.

Korecky filed a charge with the Board in January. On May 18 or 19 Krause offered him a laborer's job. Korecky did not report to work, since he was occupied with some business matters for a few days, and then he heard that a strike was to be called.

On the basis of all the surrounding circumstances it must be concluded that Korecky was discharged and refused reinstatement until shortly before the strike because of his

affiliation with the C. I. O. There is no evidence that the other men on his gang who had been taken back engaged in any organization work other than joining the C. I. O. Korecky, however, distinguished himself by securing the signatures of other employees. It may be that Korecky's position was in fact eliminated. He was, however, willing and anxious to accept any work for which he was qualified. Such work was denied to him although other men were being hired.

At the time of his discharge Korecky was earning 62 cents an hour and worked alternately 40 and 48 hours a week. He was paid time and a half for working over 40 hours a week. Between the date of his discharge and recall he earned about $370.

John Exall. Exall was employed as a chipper in the Corrigan McKinney plant from the spring of 1933 until his discharge on January 14, 1937. He joined the C. I. O. on July 2, 1936, and held the position of treasurer in Lodge 1098. It will be recalled that Exall, in his capacity as alternate Representative, endeavored to bring about the reinstatement of George Troyanovich who was discharged on August 27. On September 14 Carpenter summoned Exall to his office and said to him, "Exall, do you care to work any longer for us? . . . What the God-damn Hell are you raising hell about George Troyanovich? We fired him and when we fire him we never take him back, either. You know, he was a Communist." Carpenter then questioned Exall about his children and their education and suggested, ". . . suppose there is a chance for you to become a chipper foreman." Exall replied, "Mr. Carpenter, as long as I represent here, I decline the proposition. If the company thinks that I am good enough to become a chipper foreman, when my turn is over, I will think it over." Exall testified:

". . . he got sore a little bit on account of my answer, and he says, 'You don't fool anybody,' he says,

'we know you. We know all about you, and we got the goods on you, too. . .' I says, 'Any proof you got on me, lay your proof on the table and I will admit my mistake,' but he says, 'Go on now,' he says, 'Next time I call you here I am going to have the proof.' "

Late in October Wakefield requested Exall to urge all the employees in the chipping department to stay away from the C. I. O. Wakefield offered to permit him to work in the daytime, so that it would be possible for him to see the men on the different shifts; to recompense him for time spent outside of working hours in visiting the men at their homes; and to assist him in educating his children. Exall declined to accept these propositions.

At about the same time Exall attended a C. I. O. meeting held at the house of Manuel Garcia, an employee of the respondent. On the day following the meeting, John May, the Plan Chairman, visited Exall at his home. May explained that he was sent by Wakefield and instructed to speak to him like a father. He said they knew where Exall had been the previous day and he mentioned Garcia's name and the number of his house. He finally said, "Mr. Wakefield send me over here . . . to tell you to watch your step."

Upon his return to work thereafter Wakefield asked him whether May spoke to him and what he thought about it. Exall testified:

"I told him Mr. Wakefield I think I got a right to go any place I want. What I am doing is my own affairs. He said, 'Yes, but it don't look good in the part of the Company. You cannot work both ways. If you want to work with the C. I. O., resign your position here.' I said, 'Why should I resign my position?' He said, 'You cannot work both ways . . . You don't give the cooperation.' I said, 'If I don't give you satisfaction, cooperation, why don't you fire me?' He said, 'Don't

worry, if you don't watch your step, you going to get fired.' "

Sometime in November Exall was laid off for a week under the following circumstances: An invitation had been extended to the Employee Representatives to attend a meeting in Youngstown of the "Employee Representatives of Ohio." At a meeting of the General Committee Wakefield announced that although they had no right to represent the respondent's employees at the Youngstown meeting, any Representative could attend as an individual if he so desired. Exall consequently made the trip. When he returned, George Belline, the superintendent of the chipping department, laid him off for a week for absenting himself from work without the foreman's permission. Exall protested that he had on other occasions taken time off without permission and was never reprimanded. He complained to Wakefield and requested that a special meeting of the General Committee be called to consider the question. Wakefield replied, "Nothing doing." He made the same request upon May, the Chairman of the General Committee, who told him that if Wakefield was opposed to a meeting, nothing could be done about it.

On about January 5 Exall was ordered to report to Wakefield's office. Captain Jones, who was present, read certain names from a list containing about 300 names and check numbers and asked whether Exall recognized them. Exall testified:

"I said, 'Yes; most of them . . . Why?' He said, 'You done the dirty work.' I said, 'What do you mean, Mr. Jones?' He said, 'You signed up these men in the Union . . .' I told them it was a lie and he turned around and he said, 'Not only that but during [sic] the payroll C. I. O., you are getting $6 a day,' and I told him that was another lie. And he turned around

and said, 'Well, we expect you to say that but you cannot fool me. I am watching you day and night.' Then . . . I said, 'What business have you got to watch me what I am doing outside of the plant?' He said, 'That is my job. I am getting paid for it . . . as long as you want to work for them at $6 a day, why don't you talk to Mr. Wakefield? . . . we pay you $6 a day.'

And I says, 'What . . . are you trying to do, make a stool pigeon out of me? . . .' 'Well,' he says, 'You can't work for both sides, for Republic Steel and for C. I. O. . . . if you don't want to play ball with us . . . you won't stay long.'

I says, 'O. K. . . . If I don't give satisfaction, . . . they can fire me.'

He says, 'Don't worry . . . they are going to fire you if you don't play ball with us.' "

Jones then handed Exall a notebook containing a list of numbers headed by Exall's name and number and said that it belonged to Balint. Balint subsequently denied ever having seen the notebook. When Exall mentioned this to Wakefield, he said that Balint was double-crossing him.

At about that time lockers of employees in several departments had been broken into, and a systematic search was made of the personal belongings of some employees. Exall testified that his own locker was broken into twice but nothing was removed. This matter apparently became so acute that it was discussed at a General Committee meeting. At the meeting Exall made a statement that they were looking for union cards, that he was a union man and proud of it, and that he wished they would let him alone.

On the night of January 13 a C. I. O. mass meeting was held at the Bohemian Hall. Exall testified that he was seen entering the hall by Captain Jones and other company police who were stationed outside.

Exall was discharged on January 14. He testified that at about 2 o'clock on that day he proceeded to the tool room to change his chisels. Jack Simon, who was in charge of the tool room, told him to continue to use the same chisels longer. About half an hour later George Belline called Exall aside and said, "The way you act, it seems to me you want the Company to hire a couple of more grinders for you". He accused him of doing nothing all day but changing chisels, and specified the inches of steel that he had chipped with the respective sets of chisels. Exall replied that he could not possibly have ascertained the number of inches of steel he chipped with a particular set of chisels because he had been working alone since 12 o'clock and there was nobody present to measure. Belline refused to argue further and finally said, "Well, we don't want you here". Exall testified that the chippers had been cautioned at a number of safety meetings to exchange chisels which were worn down. Exall also testified that he had never before been reprimanded for improper use of tools. Moreover, it is unlikely that the offense with which Exall was charged was of a serious nature, since chisels which are returned to the tool room are not discarded but merely sharpened and then assigned for further use.

About a month later Exall and five or six other employees who had been discharged attempted to interview Wakefield regarding their jobs. A policeman at the gate stopped them and asked them to wait. He went in to speak to Captain Jones, returned in a few seconds, and said, "Nothing doing . . . they don't want youse". The same day Exall phoned Wakefield and was told, "You have got your case pending down at the Labor Board, we can't do nothing for you until the Labor Board makes decision".

On May 24 Wakefield offered Exall a labor job. When Exall suggested that he had seniority rights, Wakefield replied, "Oh, no, we want to hire you as a new man, forget

about it". Exall was required to submit to a physical examination. He worked on May 26 and then went on strike.

At the time of his discharge Exall was working at the rate of 52 cents an hour. Since his discharge he was employed for about a month by the W. P. A. and earned approximately $60.00.

Upon the entire record we find that Exall was discharged because of his membership in the Union.

John Petak. Petak worked at the Corrigan, McKinney plant continuously from 1928 until his discharge on January 18, 1937. He was employed as a crane repairman in the bull gang.

Petak joined the C. I. O. on July 1 or 2, 1936. Two weeks thereafter Tull, the superintendent of the electrical department, said to him, "John, I have got your name and badge number here and I heard you joined outside union". He also told him that he had been informed of Balint's frequent visits to his house. After this conversation Petak was given considerably less work than the other men.

At about the same time his house was being watched by company police. On one occasion a company policeman followed him all the way from his home to the clock house in the plant and observed him as he punched his card. On January 13 Petak saw Captain Jones and the policeman who had previously followed him standing outside of the Bohemian Hall where a C. I. O. meeting was being held.

When Petak came to work on January 18 he found that his card had been removed from the rack, and that he had been laid off. Gene Perry, the boss in the electrical department, told him that the elimination of gasoline locomotives necessitated the lay-off of some men and that he was the youngest in the bull gang. When Petak remonstrated that there were four men on the gang with less seniority, Perry

promised to secure for him a crane operator's job and to call him in a few days. He never called. About 3 weeks later Petak spoke to Krause. Krause told him to wait a minute. He returned after about an hour and a half and did not even want to talk to Petak. Petak made three other attempts and was met with the reply, "Nothing doing". Petak testified that in the meantime four men having less seniority had been taken off the speed car service and placed on the bull gang. He also testified that a janitor had been given a craneman's job and then placed on the bull gang.

Thereafter, Petak filed a charge with the Board. On May 18 he was offered a general labor job and worked until the commencement of the strike at the rate of 62 cents an hour. At the time of his lay-off he was earning 59 cents an hour. The rate for employees in the bull gang was ultimately increased to 74½ cents an hour. Petak had not earned any money from the date of his lay-off until his recall on May 18.

On the basis of the whole record we find that Petak was laid off because of his membership in the Union.

Mathew Babich. Babich first began to work at the Corrigan, McKinney plant in 1922. Shortly prior to the acquisition of the plant by the respondent in 1935, Babich was laid off because his position was eliminated. On May 6, 1936, he was given a job on the electrical repair gang and worked continuously until his lay-off on January 25, 1937.

Babich joined the C. I. O. on July 16, 1936. He testified that in August his locker had been broken into, and his union card had been removed. Everything else which he kept in the locker, including a little money, remained intact. On January 13 he went to the C. I. O. meeting at the Bohemian Hall which was kept under surveillance by company police.

On January 25 Gene Perry informed him that he had to lay him off because he was the youngest man in the gang.

Babich protested that only three or four men in the electrical department had greater seniority, that he had held various positions, and was willing to accept any job available. Perry promised to put him on at the first opportunity. Subsequent attempts on Babich's part to secure a job proved unsuccessful.

Babich filed a charge with the Labor Board in April. On May 19 or 20 Krause offered him a labor job and he worked until the strike, earning 62½ cents an hour. Prior to his lay-off he was paid at the rate of 62½ cents an hour and was working from 40 to 48 hours a week. The wage rates for electricians have been raised since then.

Upon the whole record we find that Babich was laid off because of his union membership.

Wilbert Neuman. Neuman first began to work at the Corrigan, McKinney plant on July 21, 1933. At the time of his discharge on January 27, 1937, he was employed as a chipper.

Neuman joined the C. I. O. in September 1936. He attended the C. I. O. meeting held in the Bohemian Hall on January 13. Neuman testified that at the meeting he compared his C. I. O. membership card with that of another chipper. Next to him sat a man called Russel Lapka whose father, Neuman later learned, was a company policeman.

After the meeting, Neuman sprained his back and was temporarily assigned to light work such as oiling chipping hammers and other odd jobs. On one occasion, when he was in the tool room, Jake Simon, the foreman, said to him, "You know, if I were you I would never join the C. I. O., because Republic Steel has too much money behind it".

On January 26, as Neuman proceeded to the tool room to exchange chisels, he encountered Nicola Michich, a foreman, who warned him, "You better watch yourself, because

George Balleau [Belline, the superintendent] has been watching you all day." The following day, Belline came over to Neuman with the four old chisels which he had presumably turned in the previous day, and ordered Edward Ray, another chipper, to test them. As Ray chipped the steel, Jake Simons measured the chips, and Belline made a note in his book. After Ray had thus tested all the chisels, Belline said to Neuman, "I am going to fire you. . . . I have been watching you for the last two weeks. . . . You have been doing nothing but monkeying around. You have been using too many chisels. You are fired." Neuman testified that he had been employed as a chipper for 3 months prior to his discharge and had never before been criticized for using too many chisels.

Neuman filed a charge with the Board in February. On May 11 he was reinstated to his former position. At the time of his discharge he was working at the rate of 62½ cents an hour and was averaging about $5 a day.

Upon the whole record, we find that Neuman was discharged because of his membership in the Union.

Gaetano Armeli. Armeli first commenced to work at the Corrigan, McKinney plant on April 27, 1933, as a laborer. On November 12, 1936, he was promoted to the position of chipper. This position he maintained until his discharge on February 20, 1937.

Armeli joined the C. I. O. early in January. About a month later he lost his key case containing the keys to his locker and his C. I. O. membership card. He reported the loss to the company police. In 4 or 5 days Belline informed him that Captain Jones had found his keys and would return them to him. Captain Jones opened the case and asked Armeli whether the keys belonged to him. Afraid of the possible consequences, Armeli attempted to deny any knowledge of the C. I. O. card and tore it in half. Captain Jones,

however, recovered the card from him and said, "Hold on, don't throw that away. Give it to me. I am going to check up your handwriting".

On about February 26 Armeli's foreman told him, "I am sorry, Tom, you have to go to see George Bellew, [Belline] the superintendent". Armeli testified that Belline drew a slip of paper out of his desk and read him "a story of using too many chisels" about which he knew nothing. Armeli's entreaties to be given a "break" were ineffective and he was advised to see Krause. Krause merely confirmed the fact that he was discharged and handed him his slip which, according to Armeli's testimony, was marked "suspicious".

Shortly thereafter Armeli filed a charge with the Board. On May 18 or 19 Krause visited him and offered him a job in the labor gang, where he worked until the strike at 52½ cents an hour. At the time of his discharge he was earning 62½ cents an hour plus a tonnage bonus. The wage rate for chippers has since been increased to 72½ cents an hour.

On the basis of all the evidence, we find that Armeli was discharged by the respondent because of his union membership.

(b) *Other acts of intimidation*

The discriminatory discharges of these employees accompanied by the surveillance of C. I. O. meetings, spying on employees affiliated with the C. I. O., and the other practices referred to, are not the only manifestations of the respondent's active hostility to self-organization on the part of its employees. Numerous other incidents serve further to illustrate the respondent's activities.

In the middle of August a C. I. O. meeting for negroes employed at the Corrigan, McKinney plant was scheduled to take place at the Globe theatre. The contemplated meet-

ing, however, failed to materialize. One negro who came to the theatre explained that the men were afraid to attend because Captain Jones was driving around in his car with about four other men.

The company police, under the leadership of Captain Jones, made repeated attempts by means of threats and violence to prevent the distribution of union literature in the vicinity of the respondent's plants. Thus when Benny Favorito, a volunteer S. W. O. C. organizer, was distributing literature at Independence gate, Captain Jones and Sergeant Russell threatened the employees with discharge if they accepted any handbills. On another occasion in December Captain Jones began to assemble a crowd to "tackle" the C. I. O. organizers who were distributing handbills in front of the gate. The organizers were compelled to leave.

On January 13 Balint, Vincent Favorito, and another organizer went to the plant of the Truscon Steel Company, a subsidiary of the respondent, to distribute announcements of the mass meeting at the Bohemian Hall scheduled for that night. As they took their positions near the gate, a "great big fellow" wearing a blue lumber jacket came out of the gate and approached Balint. Believing that he was an employee, Balint handed him a leaflet. He took it with his left hand, whirled Balint around, said, "You dirty son-of-a-bitch, get the hell away from here", and hit him in the eye. Balint testified that the man had brass knuckles on his right hand. Walter Maloney, alias Walter Jergis of the company police, who was standing there, called them "further names" and said they received what they were looking for. As a result of the blow, Balint's eye became infected and had to be lanced. Balint subsequently saw the man who struck him dressed in uniform at the Truscon plant.

Benny Favorito testified that a number of C. I. O. men were distributing "Steel Labor" at the Truscon plant on January 25. One of the men who were massed around Captain Jones approached him and struck him in the face. Favorito retaliated. Thereupon a company policeman ran up to him, pulled out his gun, and said, "You son-of-a-bitch, if you don't cut it out I will put a slug in your back".

On April 19, Paul Castman was brutally beaten when he was distributing literature at the Truscon plant. Prior to a description of this incident, it is material to set forth certain circumstances relative to Castman. He had procured a job at the Truscon plant on March 5, 1937. On April 5 his foreman told him that he had received orders to lay him off but gave no reason. Frank Dunch, a Representative, informed him that he was discharged for union activities. He was advised to speak with Captain Jones who questioned him about his former employment and his union activities. Castman testified:

> "He said, 'You are not working with Al Balint, are you?' I said, 'No, sir. I am not. I don't even know Al Balint.' He says, 'He is one of the Union men. . . . You ought to be working for the Union. . . . One of the Presidents of the Union's Lodge is getting eight dollars a day from the C. I. O. . . . I am also paying him for his work down here'."

He then asked him about the extent of the C. I. O. membership in the plant and again inquired whether he was associated with Balint. He warned him, ". . . if you are, it will be too God damn bad for you, if you are double-crossing me, look out."

Subsequently, Castman engaged in voluntary organization work. As already stated, on April 19, he was distributing literature near the gate of the Truscon plant to the men entering and leaving the plant. John Jense, an employee

of the respondent, told Castman he would sign a C. I. O. membership card if he had one available. Castman gave him a card and Jense filled it out. Castman noticed, however, that he had not written in the date and proceeded to do so himself. A man whom he recognized as a company policeman pushed Jense out of the way and struck him with a black jack on the side of his face. Castman testified:

> "When he hit me with the black jack, I stumbled backwards and fell in the gutter alongside of the sidewalk. . . .
>
> He jumped on me with his knees in the pit of my stomach, started beating me over the head and the arms and the hands with a black jack. He says, 'God damn you, here is some of Cap's Union. . . .'
>
> I had my hands over my head. I was trying to protect my head and he continued beating me with this black jack. Every time he would hit me he would say 'uh-uh. . . .'"

As a result of the beating Castman suffered severe injuries and spent 16 days in the hospital.

William Sikorski, who had previously been employed at the Corrigan, McKinney plant, spoke to Krause in April 1937 regarding a job. Before he was put to work, however, he was subjected to an interview with Captain Jones who was called in by Krause. Krause pointed to Sikorski and said, "There is your man". Jones examined Sikorski's application card, commented on the number of his children, and stated that the respondent would see to it that he had work to support his family. He then inquired about the men he had formerly worked with in the 10 and 12 inch mill. Sikorski mentioned a few names. Jones remarked, "Yes, every one of those boys are all on thin ice, I would not give you five cents for any one of their jobs. . . . They are running around the mill, over there, and they are organizing

the fellows into the CIO, and we are not going to stand for it." He said further, "Now, I want you to go over to work over there and I want you to keep your nose clean of the CIO because . . . we are never going to recognize them. Balint and Danitz, a couple of Communists, will never tell Republic Steel how they are going to run their corporation".

In addition to the foregoing activities, the respondent, in combating the growth of union sentiment among its employees, attempted to spread propaganda in favor of the Plan and against the C. I. O. Thus, at a Plan banquet staged in October by Wakefield, the Management Representative, Wakefield delivered a speech in which he extolled the Plan, stated that the principal task was to keep the C. I. O. out of the plant, and requested the assistance of the Employee Representatives in doing so. Likewise, petitions were circulated within the plant expressing faith in the management and satisfaction with the Plan. Again, Babich testified that at a Plan meeting or banquet he received a photostatic copy of an article by Chesly Manely in the Chicago Tribune which attempted to discredit the C. I. O. by denouncing its objectives as communistic.[60] And John Sabol, an Employee Representative, testified that at a Plan conference which was attended by a number of company officials, White, vice president of operations, delivered a speech characterizing the C. I. O. as neither an American nor a responsible type of organization.

(c) *The Employees' Representative Association*

The Employees' Representative Association was formed after April 13 when Wakefield announced at a meet-

60. The article, dated March 28, 1937, appears under the heading "SEE C. I. O. DRIVE AS COMMUNIST IN ITS OBJECTS." The first paragraph, indicating the tenor of the article, reads as follows:

"The industrial union drive of John L. Lewis' Committee for Industrial Organization which has brought the current epidemic of sitdown strikes, is essentially a communist movement and has been advocated as the first step

ing of the Plan that the respondent would henceforth be unable to furnish the Plan with financial support. The old Plan, however, was never formally dissolved. John Sabol testified that the Association contemplated the adoption of the bylaws under which the old Plan operated. The record contains no evidence that any other bylaws were formulated which would tend to make the Association independent of the respondent's control. Although some discussion was had regarding the question of assessing membership dues in the Association, there is no evidence that dues were in fact assessed or contributed by employees. There is nothing by which to distinguish the Association from the Plan except that membership was apparently no longer automatic upon voting for a Representative but depended upon the signing of membership cards. The character of the Association membership drive, which took place on the respondent's time and property, further attests to its domination by the respondent.

James C. Quinn, an inspector in the 12 inch finishing mill testified that Harold Sisk, an Employee Representative, distributed membership cards within the mill and explained the purpose of the Association. On another occasion Art Lawton, the turn superintendent, ordered every man in the mill to go into the office. On the desk in the office were a large number of membership cards, and as the men entered cards were thrust upon them. Quinn testified to the following altercation which he had with Lawton:

> " 'Mr. Lawton,' I says, 'What authority have you got standing up there and chasing them men in there?' I says, 'The Supreme Court has just signed the Wagner Relations Act,' I says, 'you haven't a damned bit of business standing up there making them men sign

in a program to overthrow the government of the United States and set up a soviet dictatorship ever since the communist party of America was officially organized at Woodstock, N. Y., in May, 1921."

up.' I says, 'The only reason they sign up, if they don't sign it, you will turn them in to their bosses in the morning,' and I says, 'You know what that means, he would come out here and lay them off again like he always does.'

'Well,' he says, 'the Wagner Labor Relations Act is like everything else,' he says, 'it don't mean a damn thing.'

Then he went on to tell me about me and my bunch of communist friends, John L. Lewis all the way down, he raked them all over the boards. . . ."

At about the same time the members of the Plan Sanitation Committee, which had on its schedule a tour of inspection of sanitary conditions, were called into Wakefield's office where Wakefield, May, the Chairman of the General Committee, and Grimm, the Secretary of the General Committee, were present. Wakefield placed a package containing Association membership cards on the table, and said, "Well, we got to get started with this some time or other and we might as well get started now." In consequence, the Committee, instead of making an inspection tour, solicited employees to sign membership cards.

The employees, however, manifested reluctance to join the Association. Sabol testified that Tull, the superintendent of the electrical department, complained to him about the low percentage of employees in his department who had joined. Tull also summoned Nutting, the foreman of the construction gang, and inquired what the trouble was. Nutting stated that he had a couple of men whose example the rest of the employees seemed to follow, and expressed the opinion that only riddance of them would help matters. Sabol testified that in compliance with Tull's request he made further attempts to prevail upon the employees to join the Association but failed to get any signatures. No deduction

was made from Sabol's pay for the time spent in this work.[61]

On the basis of the foregoing facts and the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Employees' Representative Association.

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3. *The Strike*

The strike in Cleveland commenced on May 26. During the strike, the respondent again resorted to the dissemination of literature among its employees calculated to discredit the C. I. O. and to break the strike. Girdler issued for distribution to the employees the statement of June 15 (quoted *supra*), which attacks the C. I. O. as an irresponsible and communistic organization. Also the respondent prepared a reprint (referred to *supra*) of anti-C. I. O. articles culled from various newspapers and entitled, "What the Editors are saying about the Republic Strike." John Exall testified that he received through the mails copies of both the statement issued by Girdler and the reprint.

F. The Central Council of Employee Representatives

Our previous discussion renders superfluous a detailed analysis of the Central Council. It was informally instituted in the fall of 1936, when Employee Representatives

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61. About a week before the strike a new organization, styled The Republic Employees' Association, Corrigan, McKinney Division, came into existence. Relative to this organization, David Mac Means, an employee at the Corrigan, McKinney plant, testified that shortly prior to the strike he was summoned into the office of Eckert, a foreman, and asked to sign a membership card in the Republic Employees' Association. Eckert explained to him that the men were initiating this organization of their own volition and indicated that it would be to Mac Means' best interests to sign the card. Thereafter, Eckert told him, "You better make up your mind to join the Republic Employees Association . . . because all of you fellows are going to belong to it before the end of May." Mac Means also testified that on two occasions he saw notices posted on the bulletin board announcing meetings of the Republic Employee's Association.

from ten of the respondent's plants met in the respondent's offices in Cleveland. After a second meeting at the same place on March 8, 1937, provisions for the participation of Employee Representatives in Central Council meetings were formally incorporated in the proposed revision of the Plan and later in the amended Plan, which was adopted on April 22, 1937. All the expenses of these meetings, including the meals, transportation expenses and salaries of Employee Representatives, were defrayed by the respondent.

On August 2 and 3, 1937, the Chairman of the Central Council called a meeting of the Independent Association of Republic Employees of Massillon to discuss the adoption of constitution and bylaws for the latter organization. Nick Linckenhely, who attended this meeting as a delegate, testified that the respondent paid none of its expenses and that he attended at his own expense.

The function of the Central Council, as already indicated, was to "back the Management in opposition to all outside labor organizations." It was composed in part of Employee Representatives and officers of the various labor organizations at the plants in the Massillon, Canton, Youngstown, Warren, and Cleveland districts, which, we have found, were dominated and controlled by the respondent. Under these circumstances, the Central Council could not represent the free choice of the employees. We find that the respondent has dominated and interfered with the formation and administration of the Central Council of Employee Representatives and has contributed financial and other support to it.

IV. THE CAUSES OF THE STRIKE

The respondent in its answer asserts that the strike was called without any cause or justification and solely for the selfish benefit and advantage of the S. W. O. C. and the

C. I. O. in an attempt to gain control of the respondent's employees and all steel company employees, and that there was no labor dispute between the respondent and its employees and no difference as to wages, hours, and working conditions.

From the facts recited in Section III we think it clear that the underlying cause of the strike was the respondent's whole campaign to crush the Union by means of unfair labor practices set forth above. The record shows that ever since the inauguration of the Plan in June 1933, the respondent had made plain its policy of complete antagonism to the self-organization of the employees and its determination to forestall or destroy any such organization by all means at its command. On July 2, 1936, shortly after the advent of the S. W. O. C., the respondent reiterated this basic policy in a public statement, and immediately and ruthlessly put it into effect. Its spies shadowed union organizers; its police attacked and beat them; its superintendent and foremen threatened, laid off and discharged employees for union activities; its officers fostered and supported a whole series of puppet labor organizations which the respondent manipulated to oppose the Union; and its president publicly vilified the Union's leaders, purposes and policies under circumstances intended to throw the weight of his influence against his employees' efforts at self-organization. Finally in May 1937 there occurred a series of events which precipitated the strike.

On May 3 the S. W. O. C., by Clinton Golden, wired the respondent that widespread unrest prevailed among its employees over the uncertainty of the respondent's position regarding a signed collective bargaining contract, that this unrest had been accentuated by the lay-off of several hundred Union members at the Canton and Massillon Works, and that "unless we can have definite assurance from you with date for conferences to negotiate written contract without

further delay we shall be obliged to disavow all responsibility union members in your mills remaining at work." On May 5 the respondent replied to Golden's telegram that "in view of Wagner Act see no necessity for signed contract. The policy of this company . . . is that it is willing to meet with anyone to bargain with him for whomsoever he represents . . . Will meet with you at any time mutually convenient for collective bargaining purposes."

The complaint does not allege that the S. W. O. C. represented a majority of the employees in any or all of the respondent's plants at this time, or that the respondent's refusal to sign the S. W. O. C. agreement constituted a refusal to bargain collectively within the meaning of Section 8, subdivision (5) of the Act. Nevertheless it is plain that the manner and expression of the respondent's refusal to deal with the S. W. O. C. constituted interference, restraint and coercion of its employees in their right to self-organization and collective bargaining. The respondent on numerous occasions announced, as its reasons for refusing to sign the agreement with the Union, that it favored the Plan as a successful method of collective bargaining, that it would not tolerate any interference with this successful relationship between management and employees, and that the Union was communistic, corrupt, repressive and irresponsible. Further, on numerous occasions the respondent's superintendents and foremen had announced to meetings of employees that, for the same reasons, the respondent would never sign any contract with the Union. This position was announced in such language as the following: "Regardless if every man in here joins a union, we are not going to recognize it. We are not going to sign any contract. We are not going to have no . . . collective bargaining." "We will shut the mill up and board it up before we will sign with the C. I. O." We think it clear that these repeated statements and the unrest created thereby, to which Golden referred in his

telegram, were a contributing and substantial cause of the strike which occurred on May 25 and 26.

On May 5, immediately after replying to Golden's telegram, the respondent shut down its tin plate mill at Canton and locked out approximately 650 of its employees, with the threat that the mill would not reopen "until we got rid of that Union." Upon the break-down of negotiations between the respondent and the S. W. O. C. on May 11, the Employee Representatives, with the respondent's support, intensified their attempts to obtain membership for the newly formed successors to the Plan, and conducted meetings in Canton, Massillon, Youngstown and Warren, for the purpose of preparing for a strike and organizing opposition to it. On May 20, under the circumstances described above, the respondent shut down its Massillon Works, locked out almost 3200 employees, and taunted the president of New Deal Lodge No. 1124 with its illegal conduct: "When we get through starving you out, you won't want to strike."

By these acts, the respondent served final notice in unmistakable terms that it was prepared to go to extreme lengths to destroy the Union and to deny to its employees the rights guaranteed in the Act. Faced with this illegal and provocative conduct, the Union called the strike, not as the respondent alleged, without cause or justification, but because in fact no other course remained open to it. The whole history of the respondent's unfair labor practices, culminating in this lockout on May 20, had placed the Union in a position where it had to fight for its life or be destroyed. The respondent, not the Union, had chosen the way of industrial strife.

We conclude that, although the respondent's refusal to sign the S. W. O. C. agreement, which we do not find to be an unfair labor practice, was in part the immediate cause of the strike, the fundamental cause of the strike, and a substan-

tial factor in its precipitation on May 25 and 26, was the long series of unfair labor practices set forth in Section III above.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent, described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel and Tin Workers of North America are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

2. The Plans of Employee Representation and their successors—the Employees' Representative Association, the Back-to-Work Committee, and the Independent Association of Republic Employees at Massillon; the Employees' Representative Association, the Back-to-Work Committee, and the Steel Workers Union of America at Canton; the Employee Representation Plan, the Independent Federation of Republic Employees, and the Back-to-Work Committee at Youngstown; the Employees' Independent Association of Warren; and the Employees' Representative Association at Cleveland—and the Plan of Representation of Employees at

the Canton tin plate mill and the Central Council of Employee Representatives, are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

3. By its domination and interference with the formation and administration of the labor organizations named in paragraph 2 above, and by its contribution of financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, George Troyanovich (referred to later as group A); Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (referred to later as group B); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, Fred Korecky (referred to later as group C); Harvey Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin De Long, Hallie P. Hite, Richard John Green (referred to later as group D); and each of them, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

5. By closing the Canton tin plate mill on May 5 and the Massillon Works on May 20 and thereby discriminating in regard to the hire and tenure of its employees at those plants, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

6. By its espionage, shadowing, and beatings of organizers and active members of the Union; its statements to its employees attempting to vilify and discredit the Union; its threats to discharge Union members and to close its plants before recognizing the Union, and its other

threats and warnings to employees regarding the Union; its attempts to turn civil authorities, business and other interests against the Union in order to further its own anti-Union activities; its incitement of violence and hysteria, in order to terrorize Union adherents; its donation of tear and vomiting gas to the City of Massillon; its support to the Law and Order League of Massillon and the Back-to-Work Committees in Massillon, Canton, and Youngstown; its activities in connection with the incident at C. I. O. headquarters at Massillon; its lay-offs, discharges and lockouts as stated above; its activities in connection with the above-named labor organizations; and by each of such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivision (6) and (7) of the Act.

THE REMEDY

The respondent having engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act and to restore as nearly as possible the situation that existed prior to the commission of the unfair labor practices and which would have existed except for them.

The respondent has unlawfully sponsored and supported various labor organizations discussed above. These organizations cannot, in view of the circumstances, operate as a true representative of the employees, and we shall or-

der the respondent to withdraw recognition from them and to disestablish them as such representative.[62]

The respondent has also unlawfully discriminated against its employees by locking them out at the Massillon Works and the Canton tin plate mill. To remedy this illegal conduct, we shall order the respondent to pay the employees involved back pay for the period during which they were deprived of employment.

We have found that the respondent has unlawfully laid off and discharged certain employees. It has been our practice to order the reinstatement of such employees with back pay for losses suffered by reason of the respondent's unlawful acts. We have also found that the strike at the respondent's plants, which was still in effect at the time of the hearing, was caused in substantial part by the respondent's unfair labor practices. In previous cases of this character we have required the employer to reinstate the striking employees, upon application, to their former or substantially equivalent positions.

The respondent contends, however, that acts of violence by individual strikers renders such reinstatement inequitable in this case. At Massillon and Canton, where counsel for the Board introduced testimony that picketing by the strikers was peaceful, the Board and the Trial Examiner permitted the respondent to adduce testimony in rebuttal that certain named striking employees, as well as other unidentified persons alleged to be members of C. I. O., had

62. See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*—US—, decided Feb. 28, 1938. The Court upheld the Board's order that the respondent disestablish and withdraw recognition from the Employees Association of the Pennsylvania Greyhound Lines, Inc., as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. The structure and operation of the Plan and its successors, herein, are substantially the same as that of the Employees Association of Pennsylvania Greyhound Lines, Inc.

carried sticks and clubs, cut a telephone wire, blocked roads, intimidated and beaten several members of the Canton Back-to-Work Committee and other non-strikers, and had in certain respects violated an injunction issued on or about June 25, 1937, by the Court of Common Pleas of Stark County. In Youngstown, Warren, and Cleveland, where counsel for the Board introduced no testimony on the issue of peaceful picketing, the Trial Examiner excluded testimony that strikers had committed acts of violence, but permitted the respondent to file written offers of proof setting out such testimony in detail. On March 19, 1938, the Board denied a motion by the respondent for leave to introduce additional evidence relating to violence, but granted its alternative motion for leave to submit and have incorporated in the record as a part thereof, evidence, inter alia, that certain named strikers, after the close of the hearing in this case, had pleaded guilty to indictments for various crimes committed in connection with the strike.

In considering the issue of violence in this case it should be borne in mind that, as we have pointed out before, the Board's power to order reinstatement is equitable in nature, to be exercised in the light of all the circumstances of the case. [63] Here, as we discuss more fully hereafter, the respondent has not only engaged in a long series of flagrant unfair labor practices but has itself committed or been responsible for numerous serious acts of violence. Our treatment of violence upon the part of the respondent's striking employees must be considered in the light of these facts.

Evidence that strikers have committed acts of violence is clearly relevant on the issue whether it is equitable to

63. See *Matter of Standard Lime and Stone Company*, Case No. C-220, 5, N. L. R. B. No. 15; *Matter of United States Stamping Company*, Case No. C-203, 5 N. L. R. B. No. 29.

order their reinstatement. We will therefore take into consideration evidence of convictions and pleas of guilty of acts of violence committed by individual strikers in connection with the strike. In a case of this sort, however, we will not attempt to try before the Board accusations of violence which did not result in convictions or sentences upon pleas of guilty.

To receive evidence upon such matters would raise a mass of collateral issues which the Board is not equipped to handle. The Board, of course, does not have the facilities for investigation and prosecution of acts of violence that the local law enforcement agencies possess. Nor, as an administrative matter, can the Board attempt to determine the merits of allegations of several hundred various crimes.

We think also that the Board is entitled to rely upon the local law enforcement agencies for proof of such matters. The record shows that the police and prosecuting authorities of various towns were active throughout and after the strike. Numerous arrests were made and many convictions obtained. Under these circumstances the Board is inclined to feel that it can presume that any significant crime committed was investigated by the proper authorities and, if adequate evidence was found, was prosecuted by them. As a result, especially in view of the administrative difficulty of trying such collateral issues, the Board will not go into alleged acts of violence of individual strikers beyond accepting the offer of proof, and taking judicial notice, of convictions and pleas of guilty.

It should be noted that the reasons for excluding testimony, but admitting convictions, with regard to acts of violence by employees, do not apply in the case of testimony concerning similar acts by the respondent. Such testimony relates to whether the respondent has interfered

with, restrained or coerced his employees in their right to self-organization and collective bargaining, and has thereby engaged in unfair labor practices within the meaning of the Act. Consequently, it raises direct, not collateral, issues which it is our proper duty to determine.[64]

We therefore affirm the rulings of the Trial Examiner in this matter.[65]

We come now to an examination of the evidence which we deem admissible upon this issue.

An analysis of the pleas of guilty in the respondent's offers to prove, of which we take judicial notice, supplemented by an examination of the criminal dockets of the Municipal Courts of Niles and Cleveland, the Courts of Common Pleas of Trumbull, Mahoning, and Cuyahoga Counties, and the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland, shows that seven "members or former members of the C.

64. That such a conclusion is in accordance with the clear intent of the Congress may be seen from the Reports of the Senate and House Committees in considering the reasons for confining the Act to unfair labor practices by employers. Thus the Senate Committee on Education and Labor, in reporting the bill to the Senate, said: "The bill is not a mere police court measure. The remedies against such acts (fraud and violence) in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and injunctions in labor disputes throughout the country will attest . . . In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of fraud or violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal Courts for enforcement are methods of procedure that could never be sufficiently expeditious to be effective in this connection. The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board with countercharges and recrimination that would prevent it from doing the task that needs to be done." (Sen. Rep. No. 573, 74th Cong. 1st Sess. (1935) 16, 17. See also H. R. No. 1147, 74th Cong. 1st Sess. 1935, 16.)

65. At Youngstown the respondent offered to prove that "six members or former members of the C. I. O." had pleaded guilty to the possession and use of explosives; and, at Cleveland, that two individuals had pleaded guilty to police court offenses. In excluding such evidence, the Trial Examiner was in error. In view, however, of the fact that we take judicial notice of these pleas of guilty in the offer to prove and give them due weight in our consideration of the purpose for which they are offered, the error is not prejudicial.

I. O." were indicted for the "possession and use of explosives," a felony; that three pleaded guilty to the indictment and received sentences of 1 to 20 years in the Ohio penitentiary; that three others who pleaded guilty to the indictment were placed on probation for 5 years; and that one pleaded guilty to "malicious destruction of property to the value of $300," a felony, and was fined $300 and costs. It also appears that nine "members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee" pleaded guilty to indictments for "unlawfully obstructing and retarding the passage of the United States Mail," a misdemeanor; that six received suspended sentences of 6 months in jail and were placed on probation; that two received sentences of 30 days in jail and costs; and that one received three sentences, to run concurrently, of 60 days in jail and costs. It further appears that 99 "individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee"[66] entered pleas of guilty to the following offenses:

Assault and Battery (a misdemeanor)[67]	12
Rioting, assembling together to do an unlawful act (a misdemeanor)[68]	67
Malicious destruction of property to the value of $50 (a misdemeanor)[69]	6
Interfering with and obstructing railway tracks (a felony)[70]	5
Carrying concealed weapons (a felony)[71]	9

66. The respondent did not allege and the record does not disclose that more than four of the individuals who entered pleas of guilty as set forth in the offer to prove were employees of the respondent. We shall assume, however, that all individuals alleged to be members of unions affiliated with the C. I. O. or the S. W. O. C. are employees of the respondent.

67. One was sentenced to pay the costs, but the costs were suspended; one was fined $25 and costs; nine were fined $25 and costs and given suspended sentences of 30 days in the county jail; one was fined $200 and

With the exception of the six men who pleaded guilty to the possession and use of explosives, and the one man who pleaded guilty to the malicious destruction of property to the value of $300, we cannot concur in the contention that these individuals have disqualified themselves from reemployment or that their crimes constitute valid reasons for dismissing the complaint. As we have pointed out, the respondent has committed or has been responsible for acts of violence far more serious than these offenses to which the strikers have pleaded guilty. We have found that the respondent is responsible for the incident at C. I. O. headquarters in Massillon, as a result of which three persons received fatal injuries, an undetermined number were injured by gun fire and gas fumes, 165 were arrested without warrants, and 164 held in jail without charges against them for periods ranging from one to four days. We have also found that the respondent's police at Cleveland brutally assaulted Alex Balint, an organizer for the Union, and on another occasion, beat Paul Castman, an active member of the Union, so severely that he spent 16 days in the hospital. In addition, uncontradicted testimony in the record indicates that a company guard at the Union Drawn Steel Company at Massillon attacked and burned Joe Morton, president of New Deal Lodge No. 1124, with a gas club, and left town after a warrant had been sworn out for his arrest; and that the respondent's Chief of Police, foremen and a superintendent at the Canton Works held Moesses Rafailedes, a member of the Union, against his will

costs, given a suspended sentence of 6 months in the county jail, and placed on probation for 1 year.

68. All 67 were fined $25 and costs and given suspended sentences of 30 days in the county jail.

69. Five were fined $50 and costs and given suspended sentences of 60 days in the county jail; one was fined $300 and costs and given a suspended sentence of 30 days in the county jail.

70. All five were fined $50 and costs and given suspended sentences of 60 days in the county jail.

71. All nine were fined $50 and costs and given suspended sentences of 60 days in the county jail.

in the plant during the strike from May 25 to May 29, and despite the pleas of his family, refused to release him, until two priests effected his rescue.

In view of these acts of violence by the respondent, we are of the opinion that th respondent does not come before us with clean hands in asking us to refuse reinstatement to certain employees otherwise entitled to it.[72]

Furthermore, although the respondent refused to reinstate certain employees at Youngstown and elsewhere, allegedly for the reason that they had carried sticks or clubs on the picket line, it paid a bonus to the members of the Back-to-Work Committee of guards at Canton for patrolling the city armed with shotguns, and reinstated all such employees without question. In view of this discrimination, we are compelled to conclude that the real motive behind the respondent's refusal to reinstate striking employees was their union affiliation rather than an honest belief that by carrying sticks and clubs on the picket line they had proved themselves unfit for reemployment.[73]

Finally, the respondent, by engaging in the unfair labor practices described in Section III above, has itself violated the law of the land and thereby caused the strike of its employees in which the acts of violence occurred. While the Act imposes no criminal penalties for these unfair labor practices, it expresses an important national policy, in the light of which the respondent's illegal course of conduct must be judged and the consequences of that conduct determined. For these reasons, it does not lie in the mouth of the respondent to assert that the offenses of its striking employees are necessarily and of themselves a bar to their reinstatement.[74]

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72. See *Matter of Biles Coleman Lumber Company*, Case No. C-197, 4 N. L. R. B. No. 86.
73. See *Matter of Kentucky Firebrick Company*, Case No. C-179, 3 N. L. R. B. No. 46.
74. See *Matter of Standard Lime and Stone Company*, Case No. C-220,

Under all these circumstances and without condoning the illegal acts of the strikers, we feel that such acts should not be a bar to the reinstatement of any, except those who pleaded guilty to the possession and use of explosives and the malicious destruction of property to the value of $300. The seven to be excluded are Charles Byers, Sidney Watkins, A. C. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh, and Mike Spelich.

The respondent also contends that the strike as a whole was unlawful from the time pickets carried clubs and engaged in acts of violence, that all the strikers were acting in concert to carry out an illegal purpose and were responsible for the illegal acts of any of the other strikers, and that therefore none of the strikers should be reinstated and the complaint should be dismissed. This contention must be considered in the light of Section 6 of the Act of March 23, 1932, known as the Norris-LaGuardia Act:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents except upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof." (Sec. 6, Act of March 23, 1932, 47 U. S. Stat. 70, C. 90).

With the possible exception of the 67 employees who pleaded guilty to rioting or assembling together to do an unlawful act, the respondent has neither proved nor offered "clear proof of actual participation in or actual authorization . . . (or) ratification" by strikers of the individual unlawful acts committed by other strikers. Fur-

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5 N. L. R. B. No. 15; *Matter of United States Stamping Company*, Case No. C-203, 5 N. L. R. B. No. 29.

ther, the considerations recited above in connection with the acts of individual strikers apply even more clearly here. As an administrative matter the Board is not equipped to determine whether thousands of strikers participated in or authorized or ratified unlawful acts by other strikers. Therefore, although we will accept evidence of convictions of illegal concerted action obtained by the local enforcement authorities, we will not try such issues before the Board.

Finally, even if there were proof of conviction of illegal concerted action we would not, in view of respondent's own role in the strike and the events prior thereto, consider such conviction ground for a blanket refusal to reinstate all strikers.

We shall, therefore, order the respondent to offer the employees who were laid off or discharged for their union activity immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and to pay such employees back pay for losses suffered by reason of the respondent's unlawful acts. We shall also order the respondent, upon application, to offer similar reinstatement to its employees who were on the pay roll on May 25, 1937, at its plants in the Canton, Massillon, Youngstown, Warren, and Cleveland districts, and who went out on strike on May 25 and thereafter, and have not since been fully reinstated.

Such reinstatement shall be effected in the following manner: Each employee ordered reinstated shall be entitled to reinstatement to his former or a substantially equivalent position in the plant where he was employed at the time of his lay-off or discharge, or at the time of the strike. In the case of those employees who were laid off or discharged, all employees hired after such lay-off

or discharge shall, if necessary to provide positions for those to be reinstated, be dismissed; and in the case of strikers to be reinstated all employees hired after the commencement of the strike shall, if necessary to provide positions for those to be reinstated, be dismissed. If, thereafter, by reason of a reduction of force or otherwise, there are not sufficient positions available in any plant for the remaining employees plus those to be reinstated, all the employees in such plant, including those to be reinstated, shall be given equal preference for the available positions, and such positions shall be apportioned among the employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities and following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such reduction, for whom there are then no available positions, shall be placed upon a preferential list to be given employment at any of the respondent's plants, regardless of their previous place of employment, before other persons are hired.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent Republic Steel Corporation, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto;

(b) Discouraging membership in the Amalga-

mated Association of Iron, Steel and Tin Workers of North America or the Steel Workers Organizing Committee or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire or tenure of employment or any form or condition of employment or by threats of such discrimination;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Plan of Employee Representation, and its successors—the Employees' Representative Association and the Independent Association of Republic Employees at Massillon; the Plan of Employee Representation, and its successors—the Employees' Representative Association, and the Steel Workers Union of America, and the Plan of Representation of Employees at Canton; the Plan of Employee Representation, and its successors—the Employee Representation Plan, and the Independent Federation of Republic Employees at Youngstown; the Plan of Employee Representation, and its successor—the Employees' Independent Association at Warren; the Plan of Employee Representation, and its successor—the Employees' Representative Association at Cleveland; the Central Council of Employee Representatives; and each of them, as the representatives of any of its employees at its plants in the Massillon, Canton, Youngs-

town, Warren, and Cleveland districts, respectively, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and completely disestablish the foregoing labor organizations as such representatives;

(b) Offer to Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, and George Troyanovich (group A); Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (group B); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, Fred Korecky, (group C); Harry Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin de Long, Richard John Green, and Hallie P. Hite (group D); in the manner provided in the section entitled "The remedy" above, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges;

(c) Make whole the persons named in paragraph 2 (b) above, and each of them, for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period, in the case of group A, from the date of their lay-off or discharge until the date when the strike began, and again from the date on which operations in their departments began after the reopening of the plants involved to the date of the offer of reinstatement as provided herein; in the case of group B, from the date of their discharge to the date of their offer of reinstatement prior to the strike, and again from the date of this Order to the date of the offer of reinstatement as provided herein; in the case of group C, from the date

of the lay-off or discharge until the date of the strike, and again from the date of this Order to the date of the offer of reinstatement as provided herein; in the case of group D, from the date of the refusal to reinstate until the date of the offer of reinstatement as provided herein; less the amounts, if any, which each earned during said period;

(d) Make whole the employees of the Canton tin plate mill who were employed on May 4, 1937, for any loss of pay they have suffered by reason of the closing of the Canton tin plate mill on May 5, 1937, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from May 5 to May 24, 1937, less the amount, if any, which each has earned during said period;

(e) Make whole the employees of the Massillon Works, who were employed on May 19, 1937, for any loss of pay they have suffered by reason of the closing of the Massillon Works on May 20, 1937, by payment to each of them, respectively, of a sum which each of them would normally have earned as wages during the period from May 20 to May 23, 1937, less the amount, if any, which each has earned during said period;

(f) Upon application, offer to those employees at its plants in the Canton, Massillon, Youngstown, Warren, and Cleveland districts, who went on strike on May 25, 1937, and thereafter, and who have not since been fully reinstated to their former positions (except Charles Byers, Sidney Watkins, A. C. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh, and Mike Spelich), in the manner provided in the section entitled "The remedy" above, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges;

(g) Make whole all the employees in the foregoing districts who went on strike on May 25, 1937, and

thereafter (except Charles Byers, Sidney Watkins, A. C. Scott, John Barowiec, George Bundas, Andrew J. Marsh, and Mike Spelich) for any losses they may suffer by reason of any refusal of their application for reinstatement in accordance with the preceding paragraph by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of any such refusal of their application to the date of the offer of reinstatement, less the amount, if any, which each, respectively, earned during said period;

(h) Post immediately in conspicuous places in its plants in the Canton, Massillon, Youngstown, Warren, and Cleveland districts, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid and that recognition is withdrawn from the labor organizations named in paragraph 2 (a) above as representatives of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the foregoing labor organizations are completely disestablished as such representatives;

(i) Notify the National Labor Relations Board in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 8th day of April 1938.

J. WARREN MADDEN
Chairman
EDWIN S. SMITH
Member
DONALD WAKEFIELD SMITH
Member

(Seal) NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Bertram Katz, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 8th day of April, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Mr. Lee Pressman
1106 Connecticut Avenue
Washington, D. C.

Mr. Luther Day
Day, Young and Veach
1420 Union Trust Bldg.
Cleveland, Ohio

Mr. H. C. Pontius
Lynch, Day, Pontius and Lynch
Canton, Ohio

Harrington, Huxley and Smith
1200 Mahoning Bank Bldg.
Youngstown, Ohio

J. G. Ketterer
First National Bank Bldg.
Canton, Ohio

Thomas Patton
Republic Building
Cleveland, Ohio

Steel Workers Organizing Committee
3600 Grant Bldg.
Pittsburgh, Pa.

Bertram Katz.

Subscribed and sworn to before me this 8th day of April 1938.

HAROLD G. WILSON,
Notary Public,
District of Columbia.

My commission expires May 15, 1941.
(Seal)

(Return Receipt cards of those named above attached.)

XI.

TELEGRAPHIC NOTICE TO COUNSEL OF BOARD'S INTENTION TO VACATE ORDER OF APRIL 8, 1938

May 3, 1938

Joseph W Henderson
Rawle & Henderson
Packard Building
Philadelphia, Pa

I advised you in open Court in the Third Circuit Saturday ~~last,~~ April 30, that the Board was considering vacating its Decision and Order issued April 8, 1938 against Republic Steel Corporation in Case No. C-184. The Board has today decided definitely to vacate its order. You are notified that order to this effect will be made tomorrow, May 4, 1938

CHARLES FAHY,
National Labor Relations Board.

XII.

NOTICE

(Dated and Issued June 9, 1938)

To: Joseph W. Henderson, Esq.
Rawle & Henderson, Esqs.,
Packard Building,
Philadelphia, Pennsylvania

Luther Day, Esq.,
Day, Young, Veach and LeFever, Esqs.,
1420 Union Trust Building,
Cleveland, Ohio

Thomas F. Patton, Esq.,
Republic Building,
Cleveland, Ohio

Mortimer S. Gordon, Esq.,
80 Broad Street,
New York, New York
Attorneys for Republic Steel Corporation

Lee Pressman, Esq.,
1106 Connecticut Avenue,
Washington, D. C.
Attorney for Steel Workers Organizing Committee

Frank T. Bow, Esq.,
Harter Bank Building,
Canton, Ohio

John P. Walsh, Esq.,
Renkert Building,
Canton, Ohio

Attorneys for Central Council of Steel Plants, Northern District, Republic Steel Corporation

Please take notice that on Tuesday, June 14, 1938, in *In the Matter of Republic Steel Corporation and Steel Workers Organizing Committee,* Case No. C-184, the National Labor Relations Board, unless sufficient cause to the contrary shall then appear, will vacate and set aside its findings and order in said case made April 8, 1938, for the purpose of further proceedings before the Board.

NATIONAL LABOR RELATIONS BOARD,
By NATHAN WITT,
Secretary.

Dated at Washington, D. C. this 9th day of June, 1938.

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Owen C. Fetters being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of June, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the annexed notice of intention to vacate to the following named persons, addressed to them at the following addresses:

To: Joseph W. Henderson, Esq.
Rawle & Henderson, Esqs.,
Packard Building,
Philadelphia, Pennsylvania

Luther Day, Esq.,
Day, Young, Veach and LeFever, Esqs.,
1420 Union Trust Building
Cleveland, Ohio

Thomas F. Patton, Esq.,
Republic Building,
Cleveland, Ohio

Mortimer S. Gordon, Esq.,
80 Broad Street,
New York, New York

Lee Pressman, Esq.,
1106 Connecticut Avenue,
Washington, D. C.

Frank T. Bow, Esq.,
Harter Bank Building,
Canton, Ohio

John P. Walsh, Esq.,
Renkert Building,
Canton, Ohio

(s) OWEN C. FETTERS.

Subscribed and sworn to before me this 9th day of June 1938.

(s) HAROLD G. WILSON,
Notary Public,
District of Columbia.

My commission expires May 15, 1941.
(Seal)

(Return Receipt Cards of those named above attached.)

XIII.

OBJECTION BY RESPONDENT TO PROPOSED ACTION BY BOARD VACATING AND SETTING ASIDE ITS FINDINGS AND ORDER HEREIN

Now comes Republic Steel Corporation, respondent herein, and, having been notified by the Board that on Tuesday, June 14, 1938, unless sufficient cause to the contrary shall then appear, the Board will vacate and set aside its findings and order herein made April 8, 1938, for the purpose of further proceedings before the Board, objects to such proposed action by the Board upon the ground and for the reason that the Board has no jurisdiction, authority or power whatsoever to vacate and set aside its findings and order herein made April 8, 1938, for the purpose of further proceeding before the Board.

And the respondent says that it appears before the Board in this cause at this time solely for the purpose of filing this its objection to the proposed action of the Board as hereinbefore stated, and expressly reasserts and preserves all objections and exceptions of whatsoever kind heretofore made and entered by it in this proceeding.

REPUBLIC STEEL CORPORATION,
Respondent.

By (s) LUTHER DAY,
(s) THOMAS F. PATTON,
(s) THOMAS F. VEACH,
Attorneys for Republic Steel Corporation, Respondent.

DAY, YOUNG, VEACH & LEFEVER,
Union Trust Bldg.,
Cleveland

XIV.

ORDER SETTING ASIDE FINDINGS AND ORDER

(Docketed June 14, 1938)

At a meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 14th day of June, 1938.

Present: J. Warren Madden, Chairman
Edwin S. Smith, Member
Donald Wakefield Smith, Member

The Board having issued its findings and order in the above case on April 8, 1938; and the transcript of the record in said case not having been filed in any court; and the Board having given due notice that on this date, June 14, 1938, unless sufficient cause to the contrary should then appear, it would vacate and set aside its findings and order for the purpose of further proceedings before the Board; and no sufficient cause to the contrary appearing; and the Board desiring to take further proceedings in this matter:

It is hereby ordered that the findings and order of the Board in this case made April 8, 1938 be, and they hereby are, set aside; and that the Board shall take such further proceedings herein as it may be advised are necessary or desirable.

Signed at Washington, D. C. this 14th day of June, 1938.

J. WARREN MADDEN,
Chairman,
EDWIN S. SMITH,
Member,
DONALD WAKEFIELD SMITH,
Member,
NATIONAL LABOR RELATIONS BOARD.

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Owen C. Fetters being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 14th day of June, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Board's Order Setting Aside Findings and Order to the following named persons, addressed to them at the following addresses:

Joseph W. Henderson, Esq.
Rawle & Henderson, Esqs.
Packard Building
Philadelphia, Pa.

Day, Young, Veach and LeFever, Esqs.
1420 Union Trust Building
Cleveland, Ohio

Thomas F. Patton, Esq.
Republic Building
Cleveland, Ohio

Mortimer S. Gordon, Esq.
80 Broad Street
New York, N. Y.

Lee Pressman, Esq.
1106 Connecticut Avenue
Washington, D. C.

Frank T. Bow, Esq.
Harter Bank Building
Canton, Ohio

John P. Walsh, Esq.
Renkert Building
Canton, Ohio

(s) OWEN C. FETTERS.

Subscribed and sworn to before me this 14th day of June, 1938.

(s) JOHN E. LAWYER,
Notary Public,
District of Columbia.

My commission expires September 8, 1939.
(Seal)

(Return Receipt cards of those named above attached)

XV.

MOTION BY RESPONDENT TO DISMISS COMPLAINT AND OBJECTION TO FURTHER PROCEEDINGS BY BOARD

(Docketed July 2, 1938)

Now comes Republic Steel Corporation, respondent herein, and moves the Board to forthwith dismiss the complaint herein and objects to any further proceedings upon the part of the Board in this cause, for the reason that the Board, having on June 14, 1938, set aside its order heretofore entered herein on April 8, 1938, is altogether without any jurisdiction, power or authority whatsoever to take any further proceedings herein.

And the respondent says that it appears before the Board in this cause at this time solely for the purpose of filing this its motion to dismiss and objection to further proceedings upon the part of the Board herein, and expressly reasserts and preserves all objections and exceptions of whatsoever kind heretofore made and entered by it in this proceeding.

REPUBLIC STEEL CORPORATION,
Respondent.

By LUTHER DAY,
THOMAS F. PATTON,
THOMAS F. VEACH,
Attorneys for Republic Steel Corporation, Respondent.

DAY, YOUNG, VEACH & LEFEVER
1420 Union Trust Building
Cleveland

Luther Day
George B. Young
Thomas F. Veach
Earl W. LeFever
George H. Rudolph
Frederic S. Cross
Arno G. Erdrich

June 30, 1938.

National Labor Relations Board,
Washington, D. C.

No. C-184—In the Matter of Republic Steel Corporation and Steel Workers Organizing Committee.

Gentlemen:

Enclosed please find Motion to Dismiss Complaint and Objection to Further Proceedings by Board, which we are sending to you for immediate filing.

In the event the Board overrules this motion and objection by the respondent, will you kindly advise us if, as and when you determine to take further proceedings in this case, so that, in behalf of the respondent, we may take whatever action we deem advisable to protect its interests before such further proceedings are had.

Very truly yours,

DAY, YOUNG, VEACH & LEFEVER.
Attorneys for Republic Steel Corp.

LD S
CC to Robert B. Watts, Acting General Counsel,
National Labor Relations Board, Washington, D. C.

XVI.

ORDER DENYING MOTION BY RESPONDENT TO DISMISS COMPLAINT AND OBJECTING TO FURTHER PROCEEDINGS BY THE BOARD

(Issued July 8, 1938)

The Board having on April 8, 1938 issued its Findings and Order in the above-entitled matter and on June 14, 1938 having set aside said Findings and Order and the respondent thereafter having moved the Board to dismiss the complaint herein and having objected to any further proceedings on the part of the Board in this cause, and the Board having duly considered the matter,

It is hereby ordered that said motion be, and it hereby is, denied, and that said objection be, and it hereby is, overruled.

Dated, Washington, D. C. this 8th day of July 1938.

By direction of the Board.

NATHAN WITT,
Secretary.

(Seal)

XVII.

ORDER DIRECTING ISSUANCE OF PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER, AFFORDING OPPORTUNITY TO FILE EXCEPTIONS AND BRIEFS, AND SETTING ORAL ARGUMENT

(Docketed July 8, 1938)

The Board having issued its Findings and Order in the above-entitled case on April 8, 1938, and having on June 14, 1938, set aside said Findings and Order, it is hereby

Ordered, pursuant to Article II, Section 38 (d), of National Labor Relations Board Rules and Regulations—Series 1, as amended, that Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order shall be issued in said case, and that the parties herein shall have the right on or before August 6, 1938, to file with the Board exceptions and briefs in support of such exceptions; and it is further

Ordered, that a hearing be held before the National Labor Relations Board on August 11, 1938 at 10 a. m. in Room 326, Shoreham Building, 15th and H Streets, N. W., Washington, D. C., for the purpose of oral argument upon any exceptions filed and upon the issues raised by the pleadings and evidence in said case, and that the parties herein shall have the right to appear and be heard if they so desire.

Dated at Washington, D. C., this 8th day of July 1938.

By direction of the Board:

NATHAN WITT,
Secretary.

(Seal)

XVIII.

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Issued July 8, 1938)

Mr. Mark Lauter, Mr. Lawrence Hunt, Mr. Oscar Grossman, Mr. Joseph A. Hoskins, for the Board.

Mr. Luther Day, Mr. Thomas F. Veach, Mr. Arno Erdrich, of Day, Young, and Veach, Cleveland, O.; Mr. J. G. Ketterer, Canton, O.; Mr. H. C. Pontius, of Lynch, Day, Pontius and Lynch, Canton, O.; Judge Charles F. Smith, Mr. David E. Jones, Mr. Harry S. Manchester, Mr. R. D. Huxley, and Mr. George Renner, of Harrington, Huxley, and Smith, Youngstown, O.; and Mr. Thomas Patton, Cleveland, O., for the Company.

Mr. Lee Pressman, for the S. W. O. C.

Mr. Allan R. Rosenberg and Mr. Robert Burstein, of counsel to the Board.

PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW and PROPOSED ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Issued July 8, 1938)

Statement of the Case

Upon charges and supplementary charges duly filed by Steel Workers Organizing Committee, herein called the

S. W. O. C., the National Labor Relations Board, herein called the Board, issued its complaint, dated July 15, 1937, against Republic Steel Corporation, Cleveland, Ohio, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to unfair labor practices the complaint in substance alleged (1) that during August 1936 and the period from February to May 1937 the respondent discharged and refused to reinstate certain named individuals employed at its plants at Youngstown, Canton, Massillon, Warren, and Cleveland, Ohio, for the reason that they joined and assisted the S. W. O. C. and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection; (2) that on or about May 5, 1937, the respondent locked out and refused to reinstate almost all of its employees at its tin plate mill in the Canton plant, and that on or about May 12, the respondent locked out and failed to reinstate a considerable number of its employees at its Massillon plant, for the reason that they joined and assisted the S. W. O. C. and engaged in other concerted activities for the purpose of collective bargaining and other mutual aid and protection; (3) that on or about May 26, 1937, by reason of the aforesaid acts of the respondent and its refusal to enter into a written agreement with the S. W. O. C. the employees of the respondent at its various plants went out on strike, which strike continued to the date of the issuance of the complaint; (4) that the respondent compelled a considerable number of employees at its Warren plant to remain at their jobs within the plant, and threatened to discharge such employees if they left the plant and joined the employees on strike, and further refused to reinstate certain

named employees at its Warren plant, and sought to compel others to return as new employees with the loss of former positions and seniority rights, for the reason that they left the plant during the progress of the strike and joined and assisted the S. W. O. C.; (5) that between June 23 and July 2, 1937, the respondent discharged and refused to reinstate to their former positions certain named individuals employed at its Youngstown plant for the reason that they joined and assisted the S. W. O. C. and engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; (6) that the respondent dominated and interfered with the formation and administration of certain named labor organizations at its Youngstown, Warren, Canton, Massillon and Cleveland plants; (7) that the respondent threatened its employees at its Youngstown, Warren, Niles, Canton, Massillon and Cleveland plants with discharge if they joined or assisted the S. W. O. C., and by its officers and agents followed and brutally attacked organizers of the S. W. O. C. at its plants in Cleveland, Youngstown and Warren; (8) that the respondent immediately prior to and after the commencement of the strike increased the number of its police force in its various plants and used such police for the purpose of interfering with the right of its employees peacefully to picket the plants and for the purpose of intimidating its striking employees; (9) that the respondent, in collusion with the aforesaid labor organizations dominated and controlled by the respondent, before and after the commencement of the strike called upon its employees at their homes and elsewhere in Youngstown, Warren, Canton, Massillon, and Cleveland, and intimidated and coerced them into signing so-called back-to-work petitions and other petitions, upon threat of the loss of their jobs; (10) that the respondent maintained extensive arsenals at its plants in Youngstown, Warren, Niles, Canton, and Cleveland for the purpose of interfering with, restraining

and coercing its employees in the exercise of their rights to self-organization, and interfered with the right of its employees peacefully to picket its plants by shooting at them and throwing bolts and other dangerous missiles at them; and (11) that by these and other acts the respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Copies of the complaint and notice of hearing to be held on July 21, 1937, at Washington, D. C., were duly served upon the respondent and the S. W. O. C. Pursuant to this notice, on July 21, 22, 23, and 24, 1937, a hearing was held in Washington, D. C., before the Board. At the outset of the hearing, the respondent moved to adjourn and transfer the hearing to Cleveland, Ohio. The Board denied this motion, but granted the respondent until August 4, 1937, to file its answer to the complaint. Thereafter, without waiving any of its objections to jurisdiction, the respondent participated in the hearing.

In its answer, dated August 2, 1937, the respondent denied the allegations of unfair labor practices alleged in the complaint, denied that the employees named in the complaint were engaged in interstate commerce, admitted that its employees went out on strike, but denied that they went out on strike for the reasons alleged in the complaint, and alleged that the strike was called by the S. W. O. C., acting pursuant to the direction of Committee for Industrial Organization, wtihout any cause or justification and solely for the selfish advantage of those committees in an attempt to gain control of the employees of the respondent and generally of all steel company employees. The answer further alleged, inter alia, that at the time the strike was called there was no labor dispute between the respondent and its employees, and no difference as to wages, hours, and working conditions; that

a large percentage of the respondent's employees did not go on strike but remained at work and that others returned to work promptly after the Ohio National Guard had been called out to protect them while going to and from the respondent's plants, against assaults, violence, coercion and intimidation on the part of the strikers and of the S. W. O. C. and its agents and representatives; that none of the alleged unfair labor practices complained of interfered with the respondent's operations, caused a labor dispute or affected or tended to affect commerce; that the Board has no jurisdiction to hear and determine assault and battery and felonious assault cases; and that the complaint was so indefinite as not to inform the respondent of the issues to be met, and therefore further proceeding thereunder was a denial to the respondent of due process of law.

Thereafter, pursuant to notice, the hearing was continued before John T. Lindsay, the Trial Examiner duly designated by the Board. Hearings were held from August 9 to August 12 in Canton, Ohio, from August 21 to August 24 in Youngstown, Ohio, on August 27 and August 28 in Cleveland, Ohio, from September 1 to September 16 in Canton, Ohio, from September 17 to September 21, in Youngstown, Ohio, and from September 23 to September 27, in Cleveland, Ohio. The Board, the respondent, and the S. W. O. C. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

During the hearing, the Trial Examiner granted a motion by counsel for the Board to amend the complaint by striking therefrom the names of certain employees alleged to have been discriminatorily discharged or refused reinstatement. At the close of the Board's case, the respondent moved to dismiss the complaint on the grounds that the alleged unfair labor practices did not affect in-

terstate commerce and were not established by the evidence. The Trial Examiner denied the motion. At the close of the respondent's case, the Trial Examiner granted a motion by the attorney for the Board that the complaint be conformed to the proof adduced during the hearing.

During the course of the hearing, the Trial Examiner made numerous rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 21, 1938, the respondent filed a motion with the Board for leave to introduce additional evidence, or in the alternative, to submit and have incorporated in the record as a part thereof, an offer to prove with relation to the evidence so excluded. On March 28, 1938, pursuant to an appropriate order of the Board, the respondent submitted its offer to prove.[1]

On April 8, 1938, the Board issued findings of facts and an order in the case. On April 18, 1938, the respondent filed in the United States Circuit Court of Appeals for the Third Circuit its petition to review and set aside the order of the Board. On April 30, 1938, in open court, counsel for the Board notified the Circuit Court that the Board was considering vacating its order and on May 3, 1938, the Board notified the respondent that it had definitely decided to do so on the following day. Before the Board could vacate its order pursuant to this notice, the Circuit Court on May 3, 1938, issued a rule directing the Board

1. The Trial Examiner took under advisement, without ruling on their admissibility in evidence, Respondent's Exhibits Nos. 16, 17, 18 (sample ballot; certification of the result of a poll conducted by the Canton Chamber of Commerce among the respondent's employees in Canton to determine whether they wished to go back to work or stay out on strike; and a printed handbill, allegedly distributed by the Union, urging non-strikers to join the strike within the next 12 hours "after that your safety will be your own responsibility.") These exhibits will be admitted.

to show cause on May 13, 1938, why it should not be required to certify and file in the Circuit Court a transcript of the record in the proceedings before the Board; at the same time the Circuit Court issued an order restraining the Board from taking any action in the case until the return day of the rule. On May 6, 1938, the Board filed with the clerk of the Circuit Court its motion, returnable May 9, 1938, for the vacation of the restraining order. The Circuit Court took the motion under advisement. On May 13, 1938, the Circuit Court made absolute the rule of May 3, 1938, requiring the Board to file a certified transcript of the record, and enjoined the Board from taking any further steps or proceedings in the case until the record was filed. On the same day the Board duly presented to the Supreme Court of the United States its petition for writs of mandamus and prohibition directing the Circuit Court to vacate its order of May 13, 1938, and prohibiting that Court from exercising any jurisdiction upon the petition of the respondent to review and set aside the Board's order without affording the Board a reasonable opportunity to vacate its order. On May 31, 1938, the Supreme Court rendered its opinion holding that the Circuit Court lacked jurisdiction to enter the order of May 13, 1938, and stating that, in view of the expression of willingness by the Circuit Judges to vacate the order of May 13, 1938, if the Supreme Court deemed said order to have been entered without jurisdiction, the issue of the writs prayed by the Board was supererogatory. On June 7, 1938, the Circuit Court, in compliance with the opinion of the Supreme Court, entered its order vacating the order of May 13, 1938. On June 14, 1938, the Board, having duly notified all the parties, entered its order vacating and setting aside its findings and order of April 8, 1938, and directing that such further proceedings be taken in the case before the Board as the Board may be advised are necessary or desirable. On June 27, 1938, the Circuit Court

upon motion of the Board, dismissed the respondent's petition to review and set aside the order of April 8, 1938.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Republic Steel Corporation, is a New Jersey corporation with its principal executive offices in Cleveland, Ohio. Its total assets as of 1936 were valued at $343,950,000. On May 1, 1937, the respondent and its subsidiaries employed 59,282 persons, 40,172 of them in the Ohio plants.

The respondent has developed an organization which is highly integrated from the mining of ore and other raw materials to the manufacture and distribution of a widely diversified line of finished products. In a registration statement filed with the Securities and Exchange Commission on October 21, 1936, the respondent described its business as follows:

> "The registrant (Republic Steel Corporation) is primarily an operating company, but certain divisions of its business are conducted through subsidiaries. It is engaged in the manufacture and sale of a diversified line of iron and steel products and ranks as the third largest steel company in the United States, having an annual ingot capacity of approximately 6,053,000 tons. The products of the registrant include pig iron, semi-finished steel, alloy steels, special steels, billets, bars, pipe, hot and cold rolled sheets, and strip, tin and terne plate, bolts and nuts, fabricated material and other products. It is a leading manufacturer of alloy steels, including stainless steel and high tensile

steels, and is an important producer of steel for the automobile industry and of electrically welded pipe.''[2]

The respondent and its subsidiaries—36 in number—operate numerous manufacturing plants. The principal iron and steel producing, manufacturing, and finishing plants which are in operation or have been operated within a recent period are located at Youngstown, Warren, Cleveland, Canton, Massillon, Niles, Campbell, and Elyria, Ohio; Brooklyn and Buffalo, New York; Chicago and Moline, Illinois; Hartford and Unionville, Connecticut; Pittsburgh and Beaver Falls, Pennsylvania; Gary and Muncie, Indiana; Monroe, Michigan; Cumberland, Maryland; Minneapolis, Minnesota; Birmingham and Gadsden, Alabama; Los Angeles, California; and Hamilton, Ontario, Canada. The respondent obtains more than half of its requirements of iron ore and coal from its own mines and the balance from the mines of companies in which it has an interest and by purchase from others. The respondent and its subsidiaries own or hold under lease extensive iron ore properties in Michigan, Minnesota, and Alabama; and coal properties in Pennsylvania, Kentucky, and West Virginia.

We are concerned in this case particularly with the Ohio plants of the respondent located at Massillon, Canton, Youngstown, Warren, Niles, and Cleveland. With respect to these plants, both the outgoing shipments of iron and steel products and the incoming shipments of raw materials are preponderantly interstate in character. Thus, at the Canton works, shipments of products to points outside of Ohio for the year 1936 aggregated in value $19,717,266.36,

2. Board's Exhibit No. 108. The acquisition of Gulf States Steel Co. in April 1937 further strengthened the respondent's position as the third largest producer of steel in the United States. It provided the respondent with a well-integrated unit located at Gadsden, Alabama, having annual production facilities for about 400,500 tons of ingots, 297,600 tons of finished hot roll steel products, and finishing facilities for turning out large amounts of wire and wire products, nails and staples, sheets, and miscellaneous products used chiefly in the southern market.

whereas the shipments to points within Ohio aggregated $6,704,783.29; at the Massillon works, the respective aggregates were $17,533,026.74 and $4,823,432.13; at the Youngstown works, $25,321,814.36 and $5,176,815.58; at the Warren works, $24,014,830.69 and $11,891,949.34; at the Niles works, $754,829.05 and $2,932,243.42; and at the Cleveland works, $14,523,006.98 and $7,485,938.65.[3]

The respective aggregates in value of the principal raw materials which originate outside of Ohio and those which originate within Ohio are approximately as follows: Canton—$7,681,335 and $3,907,721; Massillon—$5,312,093 and $1,567,287; Youngstown—$15,395,589 and $1,762,342; Warren—$5,961,680 and $1,397,822; Niles—$122,542 and $71,276; Cleveland—$13,685,764 and $3,706,148.[4]

II. THE UNION

While the record contains no detailed evidence relating to the structure and function of the Steel Workers Organizing Committee and the Amalgamated Association of Iron, Steel and Tin Workers of North America, we have found upon numerous occasions in other cases, and the record as a whole in this case makes clear, that these organizations are labor organizations affiliated with the Committee for Industrial Organization.[5]

3. These products include semi-finished carbon, carbon bars and bar products, stainless sheet and strip and miscellaneous alloy, alloy bars, electric weld pipe, butt weld pipe, lap weld pipe, semi-finished alloy, sheets, hot rolled strip, hot rolled strip sheets, cold rolled strip, cold rolled strip sheets, miscellaneous scrap, and northern pig iron.

4. These raw materials include coal, iron, ore, limestone, sinter, scrap, ferro manganese, ferro silicon, nickel, vanadium, molybdenum, chrome ore, tin, spelter, dolomite, fluer spar, brick, acid, clay, lime, fuel oil, moulds and tools, pyrites, magnesite, sand, soda ash, crushed silica rock, ganister and flue dust.

5. Matter of *Jones and Laughlin Steel Corporation*, Case No. C-57, 1 N. L. R. B. 503; Matter of *Wheeling Steel Corporation*, Case No. C-3, 1 N. L. R. B. 699; Matter of *Fansteel Metallurgical Corporation*, Case No. C-235, 5

III. THE UNFAIR LABOR PRACTICES

All the plants of the respondent are operated as part of a single, integrated business, and its labor policy in each plant is directed from a single source. The unfair labor practices alleged in the complaint relate to the respondent's plants in the Massillon, Canton, Youngstown, Warren and Cleveland districts. We take up in order the events occurring in each of these cities.

A. Massillon

The respondent and its wholly owned subsidiary, Union Drawn Steel Company, operate two plants in or near Massillon: the Massillon Works (Central Alloy District) located in Stark County, just outside the city limits, employing approximately 3200 employees; and the Union Drawn Steel Company plant located in the City of Massillon, at some distance from the Massillon Works, and employing approximately 450 employees.

We turn first to the Plan of Employee Representation and its successors at the Massillon Works—the Employees' Representative Association and the Independent Association of Republic Employees. Against this background we consider the organizing campaign of the S. W. O. C., the strike which began on May 25, 1937, the Back-to-Work movement, the activities of the Law and Order League of Massillon, and the tragic history of the July days of the strike.

N. L. R. B. No. 124; Matter of *Petrolcum Iron Works Company*, Case No. R-255, 3 N. L. R. B. No. 77; Matter of *Lunkenheimer Company*, 4 N. L. R. B. No. 131; Matter of *Combustion Engineering Company, Inc.*, R-242, 5 N. L. R. B. No. 61.

1. *The Plan of Employee Representation and its successors,—the Employees' Representative Association and the Independent Association of Republic Employees*

In June 1933, the respondent prepared and introduced in its Massillon Works "A Plan of Employee Representation." Similar plans were introduced at the same time in its other plants and in the steel industry at large. The formal outlines of the Plan were contained in the Articles, drawn up by the respondent and distributed to the employees at the time of its inauguration. As expressed in the Plan, its purpose was to provide "an orderly and expeditious procedure for the prevention and adjustment of any future differences, to insure justice, maintain tranquillity and promote the common welfare."

The Plan functioned through Joint Committees, composed of representatives of the employees and Company representatives named by the management. The Employee Representatives were elected annually on the basis of one representative for every 200 employees in each department.[6] All the Employee Representatives elected throughout the Massillon Works constituted the General Body of Employee Representatives. After each annual election the General Body chose members for four standing committees. These committees, with the addition of Company Representatives who might equal but could not exceed in number the Employee Representatives, constituted the Joint Committees.

If an employee was unable to adjust a grievance with the foreman of the work on which he was engaged, he might take the matter up either in person or in writing through his Employee Representative, first with the superintendent

6. Only employees who were 21 years of age or over and who were American citizens, were eligible to be Employee Representatives.

concerned, second with the Management Representative,[7] third with the management, which either tried to effect a settlement or, with the approval of all the parties, referred the matter to the proper Joint Committee. If, thereafter, the dispute had not been satisfactorily settled within a reasonable time the employee through his Representative or the management through the Management Representative might require the matter to be referred to the Joint Appeals Committee, which, in its turn, attempted to effect a settlement. If this failed, the Plan provided that the President of the Company should be notified and the matter referred to arbitration, "if the President and a majority of the Employee Representatives on the Joint Appeals Committee agree to such reference."

The Plan also provided that the Company should defray all the expenses of the operation of the Plan, including the pay of Employee Representatives. No provision, therefore, was made for dues or for the office of treasurer. Likewise there was no provision for membership in the Plan, all employees having the right to vote for Employee Representatives, and no provision for general meetings of employees. Finally, the Plan could be amended only by two-thirds vote of the entire membership of the Joint Committee on Rules, Ways, and Means, or by concurrent majority vote of both the General Body of Employee Representatives and the Representatives of the Management at an annual conference.[8]

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7. The Management Representative was appointed by the management to facilitate close relationships between the management and the Employee Representatives. He was to respond to requests from Employee Representatives; to attend, but not vote at meetings of the Joint Committees; to refer for the management any matter to any committee of Employee Representatives, and refer to the Management any matter presented by a committee of Employee Representatives. Upon the joint approval of the Chairman of the General Body of Employee Representatives and the Management Representative depended the right of all committees and of the General Body of Employee Representatives to hold special meetings or regular meetings at any other time than that provided for in the Plan.

8. During the fall of 1936, a Central Council, composed of Employee

Under these provisions of the Articles the respondent retained full control over the operations of the Plan. No amendment was possible without the respondent's approval. No matter could be referred to arbitration unless the respondent agreed. Not only was there no provision for meetings of employees as a body, but in fact the employees were precluded from any direct concern with the functioning of the Plan. All the expenses, including the time spent by Employee Representatives at meetings or adjusting grievances, were met by the respondent. Even the right of the General Body and all committees of Employee Representatives to hold special meetings or regular meetings at any other time than that provided in the Plan, depended on the approval of the respondent. Thus behind its outward semblance of democratic procedure and its announced purposes of insuring justice and promoting the common welfare, the Plan was shrewdly designed to foreclose genuine collective bargaining and to fix firmly in the hands of the respondent an indisputable control over its employees.

From start to finish, the Plan was the respondent's own. The respondent prepared it, inaugurated it, and continued it in effect for almost four years, without ever submitting it, for acceptance, alteration or rejection, to a vote of its employees. Further, the respondent lost no opportunity, through statements of its officials and otherwise, to impress upon its employees the virtues of the Plan and to exhibit its opposition to "outside unions."[9] Thus the respondent dictated the type of representation and "collective bargaining" it was willing to allow its employees to have.

Representatives selected by the General Body of each of the respondent's plants, was informally instituted. All of its expenses were borne by the respondent. In March 1937, at meetings of the Central Council in the respondent's offices in Cleveland, a revision was proposed and amendments adopted, formally incorporating the Central Council in the Articles of the Plan.

9. Further evidences of the respondent's domination over the Plan are discussed *infra*.

The following incident illustrates the manner in which the Plan operated:

At the regular monthly meeting of the General Body of Employee Representatives, held in the respondent's Industrial Relations Building on September 22, 1936, a request was made to the Management Representative for a general wage increase of the employees of the Massillon District. "Mr. Portz (then District Manager for the Central Alloy District, Canton and Massillon Works) discussed this item in detail and stated it was impossible for Management to grant this request. He also stated that when all conditions warrant this item will be given consideration."

On November 6 the Massillon newspapers carried an announcement of a general wage increase for the Massillon District. On the following day, Portz called a special meeting of the General Body of Employee Representatives and announced that effective November 16, 1936, wage rates would be increased 5½ cents per hour in the lower wage brackets. Despite the fact that "there was some kick . . . because they hollered about the newspapers having it before the representatives had it," the General Body went through the solemn procedure of voting on a motion that the wage increase be granted. The motion was carried. Such was collective bargaining under the Plan.[10]

On April 13, 1937, the day after the Supreme Court upheld the constitutionality of the Act, Carl Myers, Acting District Manager of the Canton and Massillon Works, summoned the General Body of Employee Representatives to a meeting in the Industrial Relations Building of the Massillon Works and announced that the respondent would withdraw financial support from the Plan. After Myers left the room, the Employee Representatives immediately formed "The Employees Representative Association."

10. A similar incident occurred in March 1937.

Nick Linckenhely and Nathan Brown, chairman and secretary of the General Body of Employee Representatives under the Plan, were chosen by the Employee Representatives as president and secretary of the Association. Paul Hoffman, an Employee Representative under the Plan, was chosen treasurer. For their attendance at this meeting, the Employee Representatives were paid by the respondent.

The same committees which had existed under the Plan continued as committees of the Association. Linckenhely testified that the committees "kept on functioning the same as before, that is, committees seeing the foremen about grievances and superintendents"; that the committees continued to be paid by the respondent for handling grievances, "the same as before"; that the committees circulated application cards for membership in the Association throughout the plant and elsewhere on company property, during working hours, on company time; and that the Employee Representatives adopted and used as the constitution of the Association the Plan as amended on April 22, 1937.[11]

The history and nature of these amendments reveal the extent to which the Plan and the Association were subject to the domination of the respondent. At a conference of the Central Council of Employee Representatives in the respondent's offices at Cleveland on March 8, 1937, the question of amending the Plan was discussed but deferred for later consideration. Shortly afterwards E. L. O'Connell, temporary secretary of the Central Council, submitted a proposed revision of the Plan to the Employee Representatives from the various plants and to the respondent's vice president in charge of operations and its Director of Industrial Relations at Cleveland. This revision contained

11. The Plan apparently continued in existence under its original name, at least at other plants, after the formation of the Association at Massillon.

minor changes, of a kind calculated to diminish, but in no way to remove, the respondent's control.

Soon after the submission of the proposed revision to the respondent, the decisions of the United States Supreme Court upholding the constitutionality of the Act were handed down. The proposed revision was then further altered. In its final form the amended Plan, while omitting certain of the most obvious practices forbidden by the Act, retained the same general structure. Articles dealing with the pay of Employee Representatives and the holding of Central Council meetings in the respondent's general offices were eliminated. The Joint Committees were abolished, though the four committees of Employee Representatives remained. Any matter might be referred by a committee of Employee Representatives to the management through the Management Representative; and the management through the Management Representative might require a grievance which had not been satisfactorily adjusted to be referred to the proper committee of Employee Representatives. Requests for changes in rates of pay were to be considered closed upon a decision of the proper committee of Employee Representatives and the management, unless an appeal was filed in writing by an employee or his Representative with the Management Representative within a period of 3 days after the decision was rendered.

Although the General Body of Employee Representatives was to elect a treasurer, no provision was made for initiation fees, dues, or funds for the payment of any expenses which might be incurred.[12] Employee Representatives continued to be elected on a basis of one for every 200 employees in each department, and meetings of the General Body of Employee Representatives and of the committees

12. There is some evidence that dues of two dollars a year were to be fixed at some future date, but the record contains no evidence that dues were collected by the Employee Representatives or contributed by the employees.

were to be held monthly thereafter. No provision was made for meetings of the membership at any time and membership continued to be automatic.[13]

The record does not disclose the circumstances under which the final draft of the proposed revision was prepared or approved. It does appear, however, that mimeograph copies of the Plan as amended, identical for the Massillon and Canton plants, were circulated shortly after April 22, 1937. It was stated in the preamble of the amended Plan that the amendments had been "adopted." Since under the Plan the adoption of amendments required the approval of the respondent, it is a fair inference that the amended Plan—accepted as the constitution of the Association—was, at the very least, approved by the respondent before becoming effective.

As under the Plan, no meetings of the membership of the Association were ever held and the members never participated in or had a voice in its affairs. Pressure by the respondent in favor of the Association and against the outside Union continued as it had under the Plan. Thus Peter Mouyios, as we find below, was laid off on May 3 because of his refusal to join the Association. Again Russell Eckroad, a head rougher in the hot mill, testified that near the end of April at a meeting in the mill of 28 head roughers, Superintendent Alvin Smith, after mentioning a decrease in orders, and the high cost of production at the Massillon Works, said "that he thought everybody was satisfied with the company representation plan . . . if the C. I. O. organization would come in here, that there was still a good chance of not working . . . that possibly it would shut down the plant. If it did not, we would work only one or two days a week after that." Andrew Evans, sheet

13. As stated above, it appears from the testimony of Linckenhely that, despite the absence of any provision for membership, the committees of the Association did attempt to obtain signatures to membership application cards.

mill superintendent, announced that he agreed with Smith; and then foreman David Lewis spoke: "'Boys,' he says, 'we all been working good. We have all been drawing nice pay . . . If this thing happens, if C. I. O. comes in here, and there is a strike in this plant, and this plant shuts down, a lot of you boys are going to lose your homes, your automobiles and you won't know where your next bite is coming from.'"

The respondent did not call Smith, Evans, or Lewis as witnesses and made no showing as to their unavailability. It did seek to rebut Eckroad's testimony through Arthur Kemp, another employee present at this meeting. Nevertheless, in the light of Smith's speeches on another occasion, referred to hereafter we are inclined to credit Eckroad's version. Even on Kemp's version, however, it is clear that the respondent's supervisory officials were attempting to coerce the employees into joining the Association and not joining the S. W. O. C.

Despite the respondent's efforts to use the Plan and the Association to thwart self-organization among its employees, the S. W. O. C. continued to gain ground in the Massillon plant. On May 25, 1937, the employees at Massillon went out on strike. Throughout the strike the chief figures in the Plan and the Association played leading roles in the Back-to-Work movement. These matters are discussed at length hereafter and we pass now to the formation of the Independent Association of Republic Employees upon the reopening of the plant in July.

On July 6, 1937, the day on which he returned to work, Nick Linckenhely, Chairman of the General Body of Employee Representatives under the Plan, President of the Association, and the leading spirit in the Back-to-Work movement, called a noon hour meeting of 16 employees, in the pipe shop of the Massillon Works, to form a successor

organization to the Association. Linckenhely testified that he sent for the 16 employees before and during working hours. Four Employee Representatives, in addition to Linckenhely, attended. Because of the odium attached to the use of the word "Representative" in the title of the Association, the committee of 16 decided to name the new organization the Independent Association of Republic Employees, pursuant to a suggestion made at one of the Cleveland meetings of the Central Council of Employee Representatives held under the Plan. The committee of 16 also elected as temporary officers the same Employee Representatives who had been officers under the Plan and the Association. With the formation of the Independent, the Association disappeared from the scene.

Later a new set of permanent officers was elected, none of whom, except Linckenhely, the vice chairman, appear to have been officers or Representatives in the predecessor organizations. Twenty-seven Employee Representatives, called the committee of 27, were also elected, on the basis of one for every 200 employees, "to have a way of dealing with the Company, representing the men." Many, if not all, of those elected had been Employee Representatives in the predecessor organizations and active in the Back-to-Work movement. On August 2 and 3, at the call of the chairman of the Central Council of Employee Representatives, the officers of the Independent met in Cleveland to discuss the adoption of a constitution and bylaws. As of September 13, the constitution and bylaws had not been adopted. At the time of the hearing, the Independent claimed to have a membership of approximately 2400, of whom approximately 1900 had paid their initiation fees and dues.

Like its predecessors the Independent was merely the creature of the respondent. The committee of 27 was allowed to obtain dues, initiation fees, and signatures to membership cards in the plant during working hours. Notices

of further meetings of the Independent were posted in the plant. In addition, the respondent's officials took an active part in coercing employees to become members of the Independent.

Sherman Ebbert, a member of the Union who returned to work on July 12, testified that on that day, Ralph Ebberly, a head loader, approached him during working hours and asked him to sign a membership card in the Independent. He said "it was all right, because it was a union amongst the employees, only it was to keep out any other outside union, and I asked him if it was compulsory and he said yes it is." He said "If you do not join it, we will throw you over the fence." Ebbert promised to give Ebberly an answer later. On the next day, during working hours, Ebberly again asked Ebbert to join the Independent. When Ebbert refused, Ebberly summoned a crowd of 15 or 20 men, including Paul Hoffman, one of the committee of 27, who told Ebbert that unless he joined the Independent, they would refuse to work with him. Ebbert then went to see Peppard, general superintendent of the billet department. "He (Peppard) said 'I understand you are having some trouble with the boys.' And I said 'They claim they will not work with me unless I join their union.' And he asked me why I did not want to join . . . 'Well,' he said, 'the boys said they won't work with you unless you sign the union card . . . By God, we are going to work around here and I ain't going to let no one man hold up the work . . . Now you can go home and think it over. When you decide to do what the boys want you to do, you can come back and go to work.' " As Ebbert was leaving the plant Peppard sent for him, told him that he had straightened the matter out for the time being, and said that he might return to work. Later in the evening, Ebberly called Ebbert away from his work and announced that "the boys have decided they don't want you to come out to work tomorrow." When Ebbert replied that

he had been told by Peppard to return to work, Ebberly said "You will have to fight it out with the boys then." As a result, Ebbert signed a membership card in the Independent. On August 6, however, he voluntarily left the plant because he "didn't like the way they was pushing things around there."

George Allen, a crane man employed by the respondent for 12 years and a member of the Union, who returned to work on July 8, testified that one afternoon during the second week of his return, Thomas Burkhart, treasurer of the Independent, asked him to sign a membership card in the Independent. On the next afternoon, when Allen stated that he had not yet made up his mind, Burkhart said, "If you do not sign this card, the men are going to refuse to work with you and the foreman is not going to do anything about it." Later, Don Lyman, a motor inspector, from whom Allen took orders, advised Allen to sign the membership card in the Independent within the next 2 or 3 days if he wanted to keep his job. On July 27 a committee, consisting of two motor inspectors and 11 or 12 other employees, none of whom worked with Allen, presented him with an ultimatum, "You are either going to sign this card and line up with us or you are going to get out on a picket line with the C. I. O." When Allen refused to sign, the 15 took a vote on the question of whether or not they wanted him to work. John Irwin, a steel foreman, announced the results of the ballot as 12 to 3 in favor of Allen's not working. Another man was assigned to Allen's crane. Allen then appealed to Andrew Evans, superintendent of the hot mill, who sent him to several other supervisory employees. Finally, Allen spoke to Jim Kelvey, head foreman over the electricians, and told Kelvey that the men had taken his job because he would not sign a membership card in the Independent. Kelvey replied "I can't do anything about that . . . I give you a quit slip if you want to quit." Allen

replied that he did not want to quit, that the men had taken his job and put another man on it. Kelvey promised to investigate the matter within the next few days. At the hearing on August 12, Allen testified that he had not yet heard from Kelvey.

The record is plain that, except in name, the Independent was identical with the Plan and the Association. It was formed, at least ostensibly, by the Chairman of the Plan and the President of the Association. The leading figures were Employee Representatives under the Plan and the Association. It met to adopt its constitution at the call of the chairman of the Central Council of Employee Representatives of the Plan. It replaced the Association, which disappeared upon its advent, and occupied the same place in the respondent's plant as its predecessors. As Linckenhely himself testified:

> "The men wanted it (the Association) abolished on account of the name . . . That is the only reason we changed the name and formed a new one."

Like its predecessors the Independent was dominated and controlled throughout by the respondent. It was formed on the respondent's property, received the respondent's favors, grew through the respondent's coercion. Further, even aside from actual interference by the respondent with the Independent itself, the Independent could not, in view of the circumstances under which it arose, be considered free from the respondent's influence and control. The leading figures in the Independent were a group of employees plainly under the respondent's domination and known by the employees to be so dominated. The successor to the Plan and the Association could not, by a mere change in name, be freed from the effects of the respondent's previous actions. In addition, the Independent was established under other conditions of flagrant interference with the

rights of self-organization, described hereafter. Such an organization; formed in such an atmosphere, could not be considered to represent the free choice of the respondent's employees.

Upon the basis of the entire record we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation at the Massillon plant and of its successors, the Employees' Representative Association and the Independent Association of Republic Employees, and has contributed financial and other support to them.

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2. *The discharge of Peter Mouyios*

On May 3, 1937, during working hours, Employee Representative "Happy" North approached Peter Mouyios, a chipper in the billet department, and asked him what union he wished to represent him. When Mouyios replied that he did not wish to be represented by any union, North said, "Well, I got a card here I am going to fill out for you." Despite Mouyios' insistence that he would not sign or accept the card, North filled it out, signed Mouyios' name, detached the stub, and left it with a fellow employee, from whom Mouyios retrieved it before the hearing. The card, which is in evidence, is an acceptance of membership in the Association. A comparison of Mouyios' signature written at the hearing with his purported signature on the card leaves no doubt that Mouyios' purported signature is not genuine. Mouyios testified that this entire incident took place in the presence of foreman Lefty Hilbert, that an hour and a half later, Hilbert came to where Mouyios was working and told him to go to see Peppard, and that Peppard then laid him off. When Mouyios protested that there were many men in the billet shed with less seniority who were not being laid off and offered to point out such men, Peppard

looked at a little book and replied, "Well, I cannot help that."

The respondent contends that Mouyios was laid off, in the regular order of seniority, because of a general reduction in force of approximately 180 chippers. With this contention we cannot agree. Foreman Hilbert testified that he had submitted to Peppard a complaint from Mouyios that two men with less seniority had been retained and Peppard had shown him a service record, according to which it appeared that both men had been hired before Mouyios. Hilbert stated that the chippers had been laid off, on the basis of a list in Peppard's office, starting from the bottom of the list, but that he did not know whether or not the chippers at the bottom of the list were junior in seniority to the rest, and did not know of his own knowledge whether seniority had been followed. Similarly, Lauriston Miller, a general foreman in the billet and finishing department, testified that he was given a list by Peppard of chippers to be laid off, but did not know whether or not the seniority rule had been violated. It thus appears that Peppard was the only person whose testimony would rebut that of Mouyios. The respondent, however, did not call Peppard as a witness and made no showing as to his unavailability. Although Mouyios did not become a member of the Union until a week after his lay-off, we think it clear that the real reason for his lay-off was his refusal to join the Association.[14]

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3. *Background of the strike; the lockout at the Massillon Works*

In this atmosphere of company unionism and hostility

14. At the time of his lay-off, Mouyios was earning 62½ cents an hour, plus a bonus, which brought his hourly rate to approximately 72 cents an hour, and had been working 3 or 4 hours a day for 5 days a week. Since May 3 he has not earned any money.

to outside unions, the S. W. O. C. in June 1936 began its campaign to organize the employees of the respondent. Headquarters were established in Canton, approximately eight miles from Massillon, and organizers were sent out to obtain members among the employees in the Canton-Massillon area.[15]

On July 2, 1936, the respondent issued the following notice:

"Republic Steel Corporation
and Subsidiaries

"General Offices Republic Building, Cleveland, Ohio

"TO OUR EMPLOYEES:

"We are making the following statement so that you will know the attitude of Republic toward the recently announced campaign for unionization of the steel workers.

"The leader of this drive is John L. Lewis, head of the Coal Miners' Union. He is not connected with the steel industry. He has enlisted the help of other organizations not connected with the steel industry . . . Representatives of radical and communistic groups are helping in this movement. William Z. Foster, chairman of the Communist Party, has announced his support. Foster was the leader in the unsuccessful attempt to unionize the steel industry in 1919.

"WHAT DO THEY WANT?

"John Lewis and his organization want more workers to *pay them more dues*. . . . If they could organize the steel workers they hope to collect $5,000,000 a year from them. Republic employees alone would

15. The Canton and Massillon Works are apparently classified by the respondent for administrative purposes as one region, the Central Alloy District, which is under the supervision of a single District Manager.

pay over half a million dollars. Furthermore, they could place dues and assessments at any figure they liked and steel workers would have to pay them.

"The real aim of the present organization drive is to establish a closed shop. They want to force you into the union and make you pay for the right to work. Under a 'Closed Shop' every man has to pay his dues to the union whether he wants to or not. If he gets behind in his dues, they can throw him out of the union. By this threat they can keep the dues rolling in.

"One of the announced purposes of this drive is to throw out your Employee Representatives whom you have elected for collective bargaining with the management. The union wants to destroy all Employee Representation Plans in the steel industry.

"Your Employee Representation Plan is not run by outsiders. It works. Under your plan, you select your own Employee Representatives—men you know and with whom you work. Under a union you would be represented by outsiders who may know little or nothing about your problems, your management, or the steel industry. Furthermore, you would have no choice in their selection. You would have to accept any bargain they made for you. You would have to pay money to be dictated to by somebody you did not even know.

"WHAT ARE THEIR METHODS?

"The methods customarily used by professional union agitators and organizers are force, coercion, and intimidation of workers and their families. They threaten to call a strike to force men to join their union. They try to force mills to stop operation and keep men from their work for months at a time. They do this to

scare men into their union whom they know do not want to join the union.

"WHAT IS REPUBLIC'S STAND?

"Republic stands for the 'Open Shop' principle

"No employee has to join any organization to get or hold a job.

"Advancement depends on individual merit and effort.

"Republic will not permit any activities within its plant which will:

1. Interfere with the orderly conduct of its operations.

2. Stir up strife or discontent.

3. Threaten the peace and comfort of its workers and their families.

"*Every Republic employee owes a duty of loyalty to the Company so that its best interests may be served. Conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management will not be tolerated.*

(s) T. M. Girdler
Chairman and President
R. J. Wysor
Executive Vice President and General Manager
C. M. White
Vice President in Charge of Operations
H. B. Carpenter
District Manager."[16]

16. Italics supplied.

With this statement of the respondent's policy as a guide, we turn to the history of the union's attempt to organize the employees in Massillon.

From the outset, the organizers were followed and spied upon by paid agents of the respondent. Howard Porter and Guy L. Sweeney, S. W. O. C. organizers, testified that men in old clothes and with a one or two day growth of beard, whom they had previously seen in the uniform of company police at the Union Drawn Steel Company, trailed them almost every day for three or four months in all their organizing trips in Canton, Massillon, and even to Louisville and Navarre, Ohio, towns located several miles from Massillon. Among the automobiles driven by these men, the organizers recognized one, a Ford coupe bearing the 1936 Ohio license number E-12, usually driven by the same two men, which invariably followed them. These men made no attempt to conceal their activities. They took rooms in the Northern Hotel in Canton on the fifth floor below the rooms occupied by Sweeney and Porter.

> "Every time an organizer would step out of the hotel . . . this same car E-12 would be following us . . . There was always two, it was a coupe, 1935 Ford coupe . . .
>
> "Q. (By Mr. Lauter) They would always follow you in an automobile?
>
> "A. No, at times when we would leave the hotel and go out to breakfast, lunch, or dinner, if we were walking, or making a contact, they would always follow us there walking, because they always parked across from the hotel . . . I have had them follow me into the restaurant, back to the hotel, on the elevator, upstairs and back down again . . . They would follow me around in Massillon in making contacts. In other words, they would watch me, so that I would not get to see any

steel workers because I did not want to get any steel worker in trouble."

On one occasion, after a midnight meeting in a public park of the employees of the 18 inch bar mill of the Massillon Works, these same two men followed one Laughlin, an employee of the respondent who had expressed interest in S. W. O. C., to his home, and for several days afterward were seen parked there for hours at a time. On another occasion, these men, accompanied by 15 or 20 others, followed several S. W. O. C. organizers to a fish fry at Eagle's Hall in Massillon given by the employees of Union Drawn Steel Company, and succeeded in staying so close to the organizers that they had no opportunity to speak to any of the employees there. On a third occasion, Porter and Sweeney were followed by the men driving the Ford coupe with the license number E-12 to Louisville, Ohio, where they had gone to visit a prospective member. A black sedan with five men cut in ahead of them, half blocking the road; the Ford coupe stopped directly behind them. The organizers escaped from this *cul de sac* but were prevented from visiting their prospective member.

The activities of these men were reported to Sheriff Nist of Stark County, who informed the organizers that if the car followed them out of Massillon into Stark County again, he would arrest its occupants. On September 23, the two men driving the car with the license number E-12 followed Porter out of Massillon to Navarre, where he stopped at a filling station and telephoned to the Sheriff's office. In a few moments several deputy sheriffs in a cruiser car drove up, apprehended the two men, and took them to the County Jail, where they gave their names as Long and McCallister, stated that they were plant policemen at the Union Drawn Mill in Massillon and informed Deputy Sheriff Koellner that they "had business following this car, that it was special work assigned to them as policemen at the

Republic Steel Corporation." Porter sought to press charges against them, but was informed by the District Attorney at Canton that there was no law prohibiting such activities. The men then signed waivers, releasing the Sheriff from liability, and left. To all of this testimony, the respondent offered no evidence in rebuttal.

As a result of the respondent's known hostility to the S. W. O. C. and the constant and unconcealed shadowing of union organizers by the respondent's paid agents, the employees were afraid to be seen in the company of the organizers or even to permit them in their homes. At first, therefore, meetings were secretly held "out of town after night, out in corn fields, in parks, and different places where we thought nobody was watching us." Later, however, as more of the employees joined the S. W. O. C., meetings were held in the open; the membership grew; inroads were made even among the Employee Representatives. In December 1936, New Deal Lodge No. 1124 was chartered by the S. W. O. C.

While the respondent's police were thus engaged in shadowing union organizers, the respondent's foremen and supervisory officials were endeavoring by other means to combat the growth of union sentiment. Thomas Pastorius, an employee who had been approached to join the S. W. O. C., told Kenneth Poorman, a volunteer organizer for the S. W. O. C., "I am a foreman now, and as a foreman I am supposed to quash all talk of organization in the shop." Another employee was forewarned by a superintendent to expect the visit of organizers and "watch his foot". Joe Morton, a member of the S. W. O. C., testified that foreman David Lewis and Hayden Bright repeatedly warned him not to talk union to his fellow employees and stated that it was part of their jobs to break up this C. I. O. movement in the plant. Russel Eckroad, rougher in the hot mills, testified that the same David Lewis, after informing him that "Gird-

ler will never sign a contract with the C. I. O.," mentioned something that had happened "up town" at the union hall. When Eckroad asked, "How do you know that?" Lewis replied, "That is all right how I know that. . . . We know things down here 10 minutes after they happen up town, no matter where it is."

In September 1936 Alvin Smith, general superintendent of the sheet mill, sent for Elmer Jordan, a helper in the sheet inspection department, and asked him what connections he had with the C. I. O. and John L. Lewis. Although Jordan was then a member of the S. W. O. C., he disclaimed any knowledge of the C. I. O., fearing that such an admission would result in his discharge. Smith then proceeded to lecture Jordan as follows:

> "Mr. Jordan, you know as well as I that the steel industry cannot be organized. He said, 'The Republic Steel Corporation has too much money for a thing like that to come in here.' He said you might organize the brick layers and carpenters, they are just a handful of men, but you will never touch Republic Steel. You know what happened down here a few years ago to the men who took an active part in the organization.[17] They lost their jobs. I think the best thing for you to do is lay off."

Several weeks later Jordan was again summoned to Smith's office, where Smith informed him that his work was becoming unsatisfactory.

> "He said, 'You are not on the job . . . Your foreman is complaining about your not working right, talking to the men too much.' He said, 'You are going to leave

17. In May, 1935, the Amalgamated Association of Iron, Steel and Tin Workers of North America, called a strike at the plant of the Berger Manufacturing Company, a wholly owned subsidiary of the respondent, in Canton, Ohio.

> the C. I. O. alone or you are not going to have a job here.' 'In other words,' he said, 'if they did, if they asked for recognition, we will shut this plant down, because we are operating now at cost.' "

Jordan testified that Smith again called him to his office in February 1937 and said:

> " 'I see that you did not listen to me when I told you before.' I said, 'I do not know what you are talking about.' He said, 'Well, I see you are one of the active men in the C. I. O. and you have guts enough to go in part of the mill and pass out papers and then come in and take your job.' 'I do, I absolutely have,' I said, 'I did not get paid for it. I am doing it for the benefit of the men in this plant.' He said ,'This plant is going to be shut down. The orders are getting low. We are going to shut this plant down. It seems you are all going to be out of a job.' He said, 'Mr. Chase (assistant superintendent) thinks a lot of you. We were talking here the other day and we were figuring on putting you on an inspection job which you are entitled to.' He said, 'If you keep this thing up that you are doing now, I cannot give you a job.' "

On March 17, 1937, there occurred an event of historic importance in the steel industry: representatives of the Carnegie-Illinois Steel Company, and other subsidiaries of the United States Steel Corporation, met, bargained collectively, and signed a contract with the S. W. O. C., covering wages, hours, and working conditions, and recognizing the S. W. O. C. as the representative of its members who were employees of those companies. On the day following the signing of this contract, the respondent called a special meeting at its Cleveland offices of "the Joint Committee of the Representatives of the Northern Steel Plants and the

Subsidiaries."[18] The minutes of this meeting, mimeographed and paid for by the respondent, and distributed to the Employee Representatives, read in part as follows:

"Mr. White (respondent's vice president in charge of operations) addressed the conference and discussed Corporation labor relations with the Representatives.

"Mr. Voss, Director of Industrial Relations, explained all about collective bargaining with the representatives of any group within the employ of our Corporation.

* * * * * * * *

"The Joint Session showed the efforts of our different units in combating the encroachment of outside groups. The Buffalo and Cleveland Units have a Security League. This league has members avowed to support and help sustain all the activities in connection with the Republic Steel Representation Plan.

"*At this point, a motion was made and seconded that all the representatives of both the Steel and Subsidiaries back the Management in opposition to all outside labor organizations. This motion was carried unanimously.*

"Another motion was made and seconded that each General Body within the Corporation develop methods best suited to their locality in fighting any coercion or intimidation in connection with labor organization. It was, also, suggested that each unit (Steel or Subsidiary) offer to each other the procedure or systems used in their localities to offset any efforts of outside groups.

"Before adjournment, an exchange of thanks between Management and Representatives developed. A

18. This "Joint Committee" meeting appears to have been a meeting of the Central Council.

very fine spirit of cooperation was manifested by both to carry on under our present set up." [19]

The results of this program of opposition to outside unions appeared almost immediately in those plants of the respondent involved in this proceeding. At Massillon foremen and Employee Representatives distributed petitions among the employees during working hours, stating, "We, the undersigned, are satisfied with our present Plan and do not want interference from the outside C. I. O." In the hot mill Employee Representatives circulated a petition reading, "We, the undersigned, are satisfied with the Representation Plan and the wages, hours and conditions of the mill." At first only two or three of the 60 or 65 men in the department signed it. The Employee Representatives then sent for foreman Lewis, who asked:

> "What is the matter with you fellows, you do not want to sign this petition. Everybody up above has signed it. . . . Should I bring it down again? . . . If you boys don't sign this, the result of it will be that we won't work very long . . . if we don't sign this thing up and straighten it out like all the rest of the plants are doing, that when the company man went out on the road at the end of the month, he did not know whether he would get us any more orders or not."

When Lewis returned with the petition, the men signed it.

At about the same time, the chippers in the billet department were told by their foremen to lay down their tools and report in groups of ten at a time to general superintendent Peppard's office. There the chippers were met by Employee Representatives, who copied their badge numbers on a slip of paper and informed them, "We called you boys in here to sign, so that with your signatures fixed opposite

19. Italics supplied.

your badge number that you are satisfied with the kind of employees' representation we got, this kind in the plant." Peter Demos, an employee, testified that he signed the petition under protest, because had he refused, his badge number would have remained on the paper without his signature, thus indicating his refusal to sign. A number of the chippers were apparently unable to read English. Employee Representative Pappas, without reading the petition aloud, explained it to them in Greek. A week or two later, Demos testified, "we saw in the local papers a news item that the employees of the Republic Steel Corporation, Massillon, rejected the C. I. O. and copies of this . . . petition were sent to the local authorities and to the state authorities to show that the employees were satisfied with the Representation Plan and they did not desire any outside interference from an outside union."

During March, Alvin Smith, general superintendent of the sheet mill, called special meetings of the employees in several departments and threatened them with the loss of their jobs if the respondent were forced to recognize the C. I. O. Joe Morton, a catcher in the hot mill, testified that at a meeting in the Truck Garage of the Massillon Works Smith stated "that he didn't want any of the members there to join the C. I. O., or to join any outside organization, that the Employees' Representation Plan had been very successful there, and that we had gotten our recent wage increases through the Employees' Representative Plan and that if the C. I. O. had to be recognized by the Republic Steel they would close down before they would recognize the C. I. O. The high cost of operating under a union contract would not let them work. He also stated that he would hate like hell to see grass growing in the streets of Massillon." Elmer Jordan, a helper in the sheet inspection department, testified that at another meeting in the Truck Garage, Smith "got up on a box . . . and he had a C. I. O.

membership card, and he read this card off that I accept membership in the Amalgamated Association. 'Now,' he said, 'boys, I want to tell you one thing, the coal miners, the Mine Workers of America, they will assess them five or ten dollars and take everything out of their pay that they want. That is what will happen to you. They are a bunch of grafters, communists, and they are reds . . . The first thing you can do if you want to hold your job is lay off of this organization . . . In other words, this company has been running in the red for the last three years merely making expenses. . . . Up in Monroe, Michigan, that plant they took over . . . can operate iron for half the costs they operate it here and save shipping costs."

Although the respondent did not call Superintendent Smith as a witness, it sought through the testimony of others present at these meetings to rebut certain portions of both Jordan's and Morton's testimony. On the whole record, however, we are inclined to believe that Superintendent Smith made the statements reported by Jordan and Morton. Other testimony that Smith made statements of a similar character on other occasions stands entirely uncontradicted. Moreover, the respondent neither called Smith as a witness nor made any showing as to his unavailability. Even from the testimony of the respondent's witnesses, it is apparent that Smith mentioned the possibility that the mill would lose orders and warned the men not to join anything of any kind. Further, at approximately the same time, the respondent's District Managers in other plants were reiterating to meetings of Employee Representatives the respondent's announcement of policy made on July 2, 1936, that the Communist party was supporting the C. I. O., that John L. Lewis, President of the United Mine Workers, wanted to organize steel workers for the money involved, that the respondent stood for the open shop principle, was in favor of the Plan, and would

not tolerate conduct which would disrupt what the respondent considered to be the satisfactory relations between the employees and the management. It would be curious, indeed, if the supervisory officials of the respondent explained the respondent's policy in a substantially different way from that in which the respondent's president had stated it.

Shortly after these meetings and within a fortnight after the signing of the Carnegie-Illinois agreement, the Union for the first time approached the respondent with a proposal for collective bargaining. On March 30, Clinton W. Golden, Regional Director of the S. W. O. C. for the Northeastern Region, wrote to Girdler, requesting a convenient date for a conference and enclosing a copy of a proposed agreement, identical in its principal terms with the Carnegie-Illinois agreement. The respondent did not reply.

On May 3 Golden addressed the following telegram to the respondent:

> "On March 30, 1937 we sent you standard collective bargaining contract with request for conference to discuss same stop No acknowledgment or other reply received to date stop Wide spread unrest among employees your company various mills prevails over uncertainty your position regarding signed collective bargaining contract stop This unrest accentuated result lay off several hundred union members your Canton and Massillon Works stop Unless we can have definite assurance from you with date for conference to negotiate written contract without further delay we shall be obliged disavow all responsibility union members in your mills remaining at work."

On May 5, J. A. Voss, Director of Industrial Relations, replied:

"Your request for a meeting to discuss signed contract has been referred to me for reply. In view of Wagner Act see no necessity for signed contract. The policy of this company has been and is now that it is willing to meet with anyone to bargain with him for whomsoever he represents. In conformity with this general policy the proper representatives of this company will meet with you at any time mutually convenient for collective bargaining purposes. Advise if Tuesday May eleventh my office Cleveland satisfactory for meeting."

On the following day, Golden wired back:

"Your wire fifth received stop Are we to understand you propose in lieu of signed collective bargaining contract that contracting parties commit provisions verbally agreed upon to memory and rely thereon for future reference whenever conferences are necessary to discuss grievances that may arise thereunder stop Do you further propose that management officials in the thirty five mills operated by your company and union grievance committeemen numbering two hundred as well as the sixty thousand employees also indulge in this memorizing process stop Is this your conception of orderly constructive methods of collective bargaining as contemplated by National Labor Relations Act stop If so we consider conference you propose for May 11 futile waste of time and energy stop Do you propose to accept terms similar to those in agreement signed by Carnegie Illinois Steel Corporation and approximately one hundred other companies with representatives of Steel Workers Organizing Committee without undertaking to affix your Company signature thereto stop."

A conference, nevertheless, was held between repre-

sentatives of the S. W. O. C. and of the respondent in Cleveland on May 11. On the same day, the respondent issued the following statement:

"TO OUR EMPLOYEES:

"The following statement is being made so that you will know the attitude of Republic Steel Corporation toward the effort of the Committee for Industrial Organization (C. I. O.) to force the company to sign their union contract. In its effort to secure such contract, C. I. O. has threatened to call a strike.

"You have a vital interest in this situation. It involves your right to work in peace and to support your family in comfort. We are not convinced that the C. I. O. contract is for the best interests of the employees or the Company. . . ."

After summarizing the letter of March 30, addressed by Golden to the respondent, and the telegrams of May 3, 5, and 6, the statement continued:

"The C. I. O. made no complaints (at the meeting on May 11) relative to wages or hours of Republic employees. In spite of this, the Union demanded that the Company sign their Contract.

"This is the only matter at issue and the Company at the May 11 meeting informed the C. I. O. representatives that it still believes it inadvisable to sign such contract from the standpoint of the employees and of the Company itself.

"Among the reasons for this decision are:

"1. Thousands of our employees, through their representatives, have protested against the signing of any agreement by the Company with the C. I. O. The employees of Republic now have a successful Plan for

collective bargaining in which plan a large majority of the employees participate.

"2. A study of the proposed contract wages, bonus, safety provisions, seniority rules and methods of handling grievances specified in the proposed contract are no more favorable than those now enjoyed by you.

"3. Both parties to a contract should be responsible. Republic is held by law responsible for acts of its officials. C. I. O. does not assume the same kind and measure of responsibility.

"4. The policy of Republic Steel Corporation is that NO EMPLOYEE HAS TO JOIN A UNION TO GET OR HOLD A JOB. Although the proposed agreement by its language does not disclose the ultimate objective of a closed shop, C. I. O. organizers have stated that the signing of the Carnegie-Illinois agreement 'will result in the complete unionization of the entire industry.' Republic does not believe in the closed shop principle.

"5. The signing of a C. I. O. union contract would be unfair to the workers who do not favor the Union as their collective bargaining agency and to those who prefer to deal for themselves individually with the Company. Coercion would be used by the Union in an attempt to force these workers into the Union against their wishes causing them to surrender, for all practical purposes, their rights to deal with the Company except through the C. I. O. on such vital questions as wages, hours, and working conditions.

"6. Such a step would disturb the present harmonious relations with our men and break down the mutual confidence which has existed in collective

bargaining matters between the workers and management.

"7. The signing of C. I. O. contracts in other industries has not resulted in industrial peace. Notwithstanding signed agreements, sit-down strikes and other interruptions of work have occurred in the automotive and other industries.

"The policy of this company has been, and is now that it is willing to meet with any one to bargain with him for whomsoever he represents.

"Republic believes that every employee is entitled to determine for himself, free from discrimination, interference, restraint, coercion and intimidation by anyone, whom he wishes to represent him in the matter of collective bargaining. In view of the foregoing facts and because of the Wagner Act and recent decisions of the United States Supreme Court, Republic Steel Corporation sees no necessity for signing the C. I. O. contract.

"The Company is willing to bargain collectively with its employees as in the past. MEMBERSHIP OR NON MEMBERSHIP IN ANY ORGANIZATION IS NOT A REQUIREMENT OF EMPLOYMENT."

On the night of the conference, the Association held a mass meeting in the Main Office Auditorium of the Massillon Works. Employees on duty during this time were paid their regular wages by the respondent for attending, and a total of approximately 2,000 were present. Nick Linckenhely, the principal speaker, addressed the meeting over a loud speaker system; his main topic was "that the Employees Representation Plan had been so good, so successful in cooperating with the employees in the company in getting the present wage increases . . . that the C. I. O.

was not a fit organization to belong to, that if the Republic Steel was forced to recognize the C. I. O., they would have to close down the plant, on account of the high cost of operation, and that being an old mill, Massillon would be without the Republic Steel."

Despite the respondent's pressure upon its employees to force them into the Association, however, that organization, on its own estimate, was never able to obtain more than 1,100 applications for membership out of over 3,000 employees. As a method of organizing opposition to the Union the Association was a failure.

The respondent, therefore, resorted to a more direct method of attack. On May 20 it shut down all the mills in the Massillon Works, with the exception of the blooming mill, and locked out almost all its employees. The respondent contends that the shutdown and lock-out were not aimed at the union, but were caused by an emergency in the main turbo-generator unit which generates power for the use of the mills. T. J. Ess, a combustion engineer employed by the respondent, testified that at about 7 p. m. on the night of May 20 he received a call from the plant that there was trouble with the turbo-generator unit, that he went to the power house, saw the machine vibrating very badly, and after consultation decided that it was necessary to shut down certain units of the plant. At 10:45 p. m. power was switched off from all the mills of any consequence in the Massillon Works, except the blooming mill, and the mills remained shut for 3 days until May 23.

On cross-examination, however, Ess admitted that the respondent maintained a connection in the plant with the power service of the Ohio Public Service Company in order to take care of such a breakdown, and that power to run the mills could have been obtained from that company

without even pulling a switch. It is therefore apparent that even if there was a breakdown in the turbo-generator unit, there was no emergency which compelled the respondent to shut down its mills.

On the other hand, the respondent had repeatedly threatened to close down the plant before it would grant recognition to the union. From November 1936 until a few days before the shut-down, in conversations, interviews, and meetings, Alvin Smith and Andrew Evans, superintendents in the sheet mill, and foreman David Lewis, had drummed into the ears of the employees that recognition of the C. I. O. would mean a shut-down of the plant. The chief selling point of the Association, as reiterated by the Employee Representatives to all comers, was—Join the Association or else—if Republic is forced to recognize the C. I. O., it will close down the plant.

Quite apart from these repeated threats and warnings, the uncontradicted testimony of Joe Morton, president of New Deal Lodge No. 1124, reveals the respondent's motive for the shut-down. On May 21 or 22 Morton met foreman Lewis on Main Street in Massillon:

> "Mr. Lewis said, 'I guess you will have enough of this strike when the company gets done with you.' I said, 'What do you mean "when the company gets done with me?"' He says, 'When we get through starving you out.' 'Why,' he said 'you won't want to strike'."

In the light of these facts and the respondent's failure to show any convincing business reason for its conduct, we are compelled to conclude that the respondent shut down its mills and locked out its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the Union. The respondent

thereby discriminated against its employees in regard to hire and tenure of employment and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

To consider the lockout, however, as merely one more instance of the respondent's hostility toward the union would be to ignore the circumstances under which it occurred and the history of which it was a part. After the exchange of telegrams on May 6 and the breakdown of negotiations on May 11 between the S. W. O. C. and the respondent, the situation in Massillon was rife with unrest. At this critical time, the respondent saw fit to carry into execution its repeated threats to close the plant if the C. I. O. asked for recognition. In the long history of the respondent's campaign to crush the Union, this was the final blow. Under these circumstances, the union could not hope to preserve itself without immediate resort to action. At 11 p. m. on the night of May 25, pickets surrounded the plant and the strike began.

The respondent's activities after the lockout leave no doubt that it expected the strike and made preparations to meet it. On the morning of May 25, Carl Myers, acting District Manager of the Canton and Massillon Works called on Stanley W. Switter, Massillon's Chief of Police, told Switter that "they expected a strike at almost any time in the near future and wanted to know how the Police Department was able to handle the situation . . . how we stood and how many men we had. . . ." Later in the day, James A. Lewis, Service Manager of the Alloy Steel Division of the respondent, who had been in Detroit, Michigan, was informed by his office "that there was considerable talk about a strike taking effect that night" and made arrangements to get back as quickly as possible by flying from Detroit to Akron, arriving in Massillon at about 8

p. m. C. W. Cravens, one of the respondent's salesmen, who remained in the District Office with 85 other employees, including three cooks and seven telephone operators from May 25, for 15 days and 16 nights, testified that he came back from Akron to go into the office because he had heard rumors that there was going to be a strike, and that on the night of May 25 there were a number of cots in the District Office and a food supply "more than enough for 15 days and 16 nights." Several foremen and employees who remained in the Massillon Works after the strike was called also testified that they slept on cots which were already there, or which were delivered to the plant on the night of May 25.

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4. THE STRIKE

Between May 25 and July 1, when Governor Davey ordered the Ohio National Guard into Massillon, the Massillon Works and the plant of the Union Drawn Steel Company remained closed. During this period, in preparation for the reopening of the plants, the respondent was engaged in a campaign to conscript the Massillon police department to break the strike.

Certain obstacles appeared to block the easy accomplishment of this objective. The Massillon police department was small and poorly equipped for the respondent's purposes. Of a total of 18 regular police, only 13 were available for strike duty and the department lacked a supply of tear and vomiting gas and other equipment considered essential to break a strike. Furthermore, all the city officials—Mayor Krier, City Solicitor Hardman, Chief of Police Switter, and the City Council—were insistent not only that the city could not afford to hire special police or buy extra equipment, but that the Massillon police must

remain neutral and would not be used to break the picket lines. Finally, a large body of public opinion in Massillon supported both the strikers' cause and the attitude of the city officials.

The respondent began systematically to mobilize its forces and seek its allies to overcome these obstacles.

On May 26, the first day of the strike, a committee of six employees, met at Linckenhely's home and formed a Back-to-Work Committee. The members of this committee were either officers or Employee Representatives under the Plan and the Association.[20] During the strike other Employee Representatives and at least two foremen—Paul Rider, foreman in the billet shop, and "Chic" Immell, foreman in the blooming mill—joined the committee and took an active part in its work. Thus the Back-to-Work movement was organized by the very employees through whom the respondent had maintained its control over the Plan and the Association, and assisted by the respondent's foremen.

On May 27 or 28, the Board of Directors of the Massillon Chamber of Commerce organized a temporary committee composed of businessmen and citizens of Massillon with the announced purpose of acting as a clearing house for information with regard to the various phases of the strike situation as it affected the business community in Massillon. This committee later developed into a broader organization which came to be known as the Citizen's Committee, the Citizen's League, the Labor Relations Committee, or more commonly, the Law and Order League of

20. Nick Linckenhely, chairman of the General Body of Employee Representatives under the Plan and president of the Association; N. C. Brown, secretary of the General Body of Employee Representatives under the Plan and secretary of the Association; Paul Hoffman, Employee Representative under the Plan and treasurer of the Association; Henry Gonder, Sam Schilling, Don Burkhart, identified by Linckenhely as Employee Representatives under the Plan and the Association.

Massillon. Its most active members were D. W. Case, secretary of the Massillon Chamber of Commerce, Jonathan Lester, president of the Massillon Rubber Company, and Glen Lanham, manager of the Erie Chevrolet Sales Company.

These two organizations formed the spearhead of the respondent's attack. For the first two or three weeks of the strike, as workingmen demanding only the right to work and as citizens interested in preserving law and order, they presented to the public an unimpeachable front. Thereafter, behind this front, the respondent proceeded to manipulate these groups for its own purposes.

On June 9, Glen Lanham of the Law and Order League went to Chief Switter's office with the message that Carl Myers and Gordon Hess, the respondent's assistant sales manager, wanted to see Switter in Canton. City Solicitor Hardman, Switter and Lanham then drove to the Hotel Onesto in Canton where Myers was confined to his room as a result of having been shot by one of his company guards. Myers immediately launched into an attack upon the Chief and the city officials. "He wanted to know what the hell was going on over there; were we going to allow the hoodlums to run things and why they cut the telephone wires and why the hell we didn't take action such as the Chicago police did and put them where they belonged . . . they knew how to handle the situation, if we did not,[21] and if

21. Myers was referring to the incident which occurred on May 30, 1937, in the vicinity of the respondent's plant in Chicago, Illinois, when the Chicago police dispersed a crowd of strikers and sympathizers, ten of whom were killed. See *The Chicago Memorial Day Incident*, Report (No. 46, Part 2) of the Committee on Education and Labor of the United States Senate, pursuant to S. Res. 266 (74th Congress), which makes the following findings with regard to this incident:

"We conclude that the consequences of the Memorial Day encounter were clearly avoidable by the police. The action of the responsible authorities in setting the seal of their approval upon the conduct of the police not only fails to place responsibility where responsibility properly belongs but will invite the repetition of similar incidents in the future."

we didn't wake up, we wouldn't need what police force we had, we wouldn't need a chief of police and we wouldn't need a city solicitor and we wouldn't even have a first class post office; that Massillon would be a junction if that mill shut down, which it looked as if it would with the wires cut and they would have to evacuate the office . . ." Chief Switter replied that he had only 18 men and that "it was not our job (anyway), that we wasn't a strike-breaking outfit, and, furthermore, the mill was down in the country out of the city limits."

Hardman testified with regard to Myer's remarks as follows:

> "Mr. Myers began asking what the people of Massillon were doing about the strike, what the police department was able to do, and what the businessmen were doing about it, whether or not they were interested in keeping the steel plant there. And he went on to say that if the steel plant moved out that they would not need a chief of police and they would not need a mayor and would not need a city solicitor. . . . Mr. Myers pointed out what a fine job the Chicago police had done."

At Myer's request, Switter agreed to remove certain records and evacuate from the main office certain employees who had remained there since May 26. In the course of this discussion, Myers stated that there were some arms and ammunition in the main office, which could be locked up in the vault, but "they wouldn't do anybody any good there." He proposed, instead, to give them to Switter as a start toward some equipment to help the police department "in any situation which might arise." Upon Switter's acceptance of this offer, Myers dictated a letter to Raleigh France, Chief Deputy Sheriff of Stark County,

authorizing France, who was in charge of the main office, to turn the arms and ammunitions over to the Chief. "If you are going to turn this office over to Mr. Switter's protection," asked Lanham, "and moving out in the entirety, does that mean you are never going to open up this office in Massillon again and the plant in Massillon." "I did not say that," replied Myers, "I said that when enough men want to work in Massillon, we will open."

At 4 o'clock that afternoon, Switter placed the arms and ammunition with the office records in the trunk of a car, drove through the picket lines and delivered the trunk load to the respondent's agents. The arms and ammunition were not turned over to the Chief until later that evening. At 8 p. m., shortly after dark, pursuant to arrangements made with France, Switter drove to the Brookside Country Club, four miles north of Massillon, where Frank and Lieutenant Adler of the respondent's police force, under cover of darkness transferred to Switter three shot guns, six combination shells, three gas guns, and about 90 gas projectiles.[22] The respondent's first objective was accomplished: The Massillon police department was now adequately equipped.

22. On June 1, 1937, Federal Laboratories, Pittsburgh, Pennsylvania, manufacturers of tear and vomiting gas, had shipped to the Union Drawn Steel Company at Massillon the following material:

3	1½" cal. riot guns	@	$60.00	$180.
30	1½" cal. long range projectiles C. N. (tear gas)	@	7.50	225.
90	1½ cal. long range projectiles D. M. (vomiting gas)	@	8.00	720.
12	1½" cal. short range cartridges D. M.	@	6.00	72.
40	Grenades, Jumbo Triple Chaser D. M. 116 M	@	13.00	520.
35	Grenades, Jumbo Spedeheat D. M. 113 M	@	12.00	420.
1	Type "GB" gas mask			25.50
	Total			2159.50
	Less 10% on item # 1		18.00	
	Less 20% on items 2-3-4-5-6		391.40	
				409.40
				1750.10

On June 11, Carl Myers again summoned the city officials to the Hotel Onesto in Canton, to discuss the question of supplying food to 16 guards and 4 maintenance men that had remained in the plant. Myers told the city officials and Raleigh France, whom Myers had invited to sit in at the conference, that "they had about four or five days supply of food in the plant, that it was up to Switter and Frank to get food into the men, that the maintenance men were keeping the coke ovens hot, that if that battery of coke ovens was ruined it would be goodbye for Massillon, that they wouldn't ever start that plant again." Switter promised to see what he could do about getting the food into the plant.

On the following day Myers called Switter on the telephone and angrily protested against an arrangement, to which Switter had agreed, by which one Marshall, a company official, was to enter the plant, accompanied by two pickets, to inspect certain insurance and relief records. After this telephone conversation, Switter informed D. W. Case that Myers was agitated by the refusal of the Union to permit Marshall to enter the plant without an escort of pickets. Case offered to have J. Lester of the Law and Order League telephone Myers and "stall him off for a few days until we know what we are going to do." Case then communicated with Lester, who telephoned to Canton and reported that Myers had "consented to give him (Switter) two or three days to get himself into position, he

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10% excise tax on items 1-2-3 and 4	97.56
	1847.66

(Exhibit 1343-P, p. 5021, Volume 14, Hearings before the Subcommittee of the Committee on Education and Labor United States Senate, Seventy-fifth Congress, first session, pursuant to S. Res. 266).

wanted to put himself (Myers) in shape to really take charge."

On the following afternoon, June 13, at Case's request, Switter attended a meeting of the Law and Order League at the Chamber of Commerce. Switter was asked whether, if the money was raised, he would be willing to add the required number of police and purchase the extra equipment. Switter replied that he would not agree to this without the Mayor, but that if the Law and Order League would hold a further meeting, he would see to it that the Mayor was present. Switter testified, "They wanted to know how much it would cost to put on these police and how many we would need in order to maintain law and order and so on and how much equipment. They argued why the Mayor would not appoint the police and we threshed around for a couple of hours there and talked about the Monroe situation . . . Monroe, Michigan. . . . They said they done a good job up there; they smashed the picket lines up there and they deputized enough police to do it . . . that turned out to be the main topic of conversation."

On the next morning, Mayor Krier, Switter, Hardman, and Snyder, the safety director of Massillon, attended the meeting of the Law and Order League at the Chamber of Commerce. Switter testified, "They put the heat on the Mayor about appointing some special police . . . they wanted to know why he would not appoint more police . . . and he argued that the city was broke and did not have the money to do it. And this group said they could raise the money . . . $8000 to pay for 50 policemen for two weeks and the equipment considered necessary for the department . . . and finally he agreed to appoint them (but) if he took on the 50 police that not one of them would go to the picket line . . . (This) they did not like

. . . so well." After this meeting the League, which had raised approximately $1200, returned the money to the businessmen who had donated it.

Later that afternoon, Mayor Krier, Hardman, and Switter called on Myers at the Hotel Onesto in Canton and informed him that they could not get the food into the plant. Switter was the spokesman: "We told him we wasn't going to, that we wasn't bringing any food down to them or to the pickets, either . . . because we figured it was not our job; it was over in the county and it was not up to us to get food down to them. We decided we wasn't going to have nothing to do with it. . . . And then he (Myers) lit on us and told us that it was a funny thing that a little town like Monroe could build up a police department big enough to get their mill operating again and control the situation and it was damn funny we couldn't do something. . . . He said that Massillon would be a prairie and it wouldn't need a mayor or safety director or any of us . . . he said he would take care of it himself that he wouldn't let those people sta ." Hardman's testimony confirms and amplifies that of Switter: "We talked about what it meant to Massillon, if Massillon would lose that plant, and there was danger of its being lost . . . he said that if the plant was lost, the people of Massillon and the officials would not be responsible for losing it and he thought they were not taking any interest in it and in seeing that the plant was reopened." With this, the conference ended.

On June 15, the respondent issued and distributed to its employees a statement signed by Tom M. Girdler which, after reciting that many of its plants were reopening, added:

"Movements similar to that which resulted in

opening the Monroe plant are spreading rapidly in other affected communities. Employees kept from their jobs by mobs of armed pickets many of whom have never worked for Republic and citizens outraged by this defiance of law and decency by the C. I. O. are joining together to insist that law enforcement agencies compel the union to cease unlawful picketing.

* * * * * * *

So, when you get all through, the present controversy sums up somewhat like this:

[Blackface type] Must Republic and its men submit to the communistic dictates and terrorism of the C. I. O.?

[Blackface type] If America is to remain a free country the answer is NO."

After this statement, the Back-to-Work movement, which had hitherto been relatively inactive, began its work in earnest. At first, Linckenhely testified, the Employee Representatives, assisted by foremen Paul Rider and Chic Immell, merely circulated petitions from house to house, asking their fellow employees to return to work; then began "the big move." On June 20 Linckenhely and the other Employee Representatives called on the members of the Law and Order League at the Chamber of Commerce for their assistance, and "they all talked about the Back-to-Work movement and how to find a way and means of trying to get the men back to work." On the following day, June 21, led by Linckenhely, Fred Becker, a metallurgist in the employ of the respondent, and foremen Rider and Immell, a crowd of approximately 300 men appeared at City Hall. "They stormed the City Hall," testified Switter, " . . . they demanded a meeting with the Mayor and I . . . they was all up in the air about wanting to go back

to work and wanting me to give them protection . . . they demanded to know why I refused to accept this several thousand dollars that . . . the Law and Order League promised to raise . . . for the special police." A committee, with Linckenhely and Rider as spokesmen, then met in the Safety Director's office with the Mayor, Switter and Hardman. Switter urged the committee not to rush matters or to become so excited. He told them the money which the Law and Order League had promised had never been raised, and stated, in answer to their further questions, that he would refuse to accept it if it were raised again because he "was not going to take on a gang of men to go down and break the picket lines," and that the picket lines were around the entrances to the plant beyond the jurisdiction of the city.

After similar remarks by the Mayor and Hardman, the city officials upon the demand of the committee addressed the rest of the group waiting in the lobby of City Hall. Switter told them "to hold themselves a few days to give the Mediation Board at Cleveland . . . appointed by the President of the United States . . . a chance to do something before they started any back-to-work movement, and I told them then and there that I wasn't going to take any fifty greenhorn men and go down to the picket line under no consideration.[23] The Mayor also referred to the President's Mediation Board, called upon the members of the group not to be hasty and stated that they were foolish to get excited, that the plants would probably open within a few days, and that there was no use in going down to the picket lines and having a battle and losing more time than they would lose by waiting. "Gentlemen" he said, "remember if we start such things it won't be one-sided,—

23. See *Report of the Federal Steel Mediation Board to Secretary of Labor Frances Perkins.*

there will be bloodshed on both sides. Be patient a few days. . . . We don't want any trouble or bloodshed down there."

On the afternoon of the meeting with the Back-to-Work Committee, the city officials drove to Canton to see Colonel Lawler, observer for the National Guard in the Massillon district, and, after discussing conditions in Canton, told him of the demands of the Law and Order League and the Back-to-Work movement and requested him to come to Massillon to observe the situation there. Lawler replied that he himself and other National Guard observers had been to Massillon and ridden around the picket lines and that from his observations, Massillon was in fine condition, everything was pretty peaceful, as peaceful as could be expected under strike conditions. Lawler and the city officials then discussed the activities of the pickets in carrying sticks and clubs, piling stones, and blocking roads. Lawler dismissed these activities as "technical" and stated that it would be impossible to argue over every little technical point of the law when an emergency such as a strike situation arose. He ended by complimenting the city officials very highly on the way in which they had been handling the situation, and stated that they had it well in hand.

The city officials then returned to Massillon to attend a meeting of the City Council, where Switter presented a request for additional police, on the ground that he was using some men in the strike zone that were needed in the city. The City Council rejected the request. "They was kind of cold on it," Switter testified. "We went into a meeting in the City Solicitor's office after the Council . . . a committee meeting. They told me not to get hot and bothered about it, it was down in the county, and it was up

to the sheriff." "They immediately jumped us," Hardman added, "about not having the funds to spend, and they said there was no reason for the Chief to get all excited about it; to begin with the plant was in the county and it was up to the sheriff to do something about it."

Following the conference at City Hall on June 21, the Back-to-Work movement held a meeting, with about 450 present, at Willowdale, on June 22, and another meeting at Sippo Park with about 700 present, on June 23. Foremen Rider and Immell donated the use of their automobiles to assist Linckenhely and the other Employee Representatives and to transport employees to these meetings. At the Willowdale meeting, Linckenhely testified, Rider addressed the crowd and "talked in regards to the way they were kept out of the plant and that so many men came to him, wanted to know if anything could be done about getting back to work . . . and spoke along the line (of) making arrangements to go back to work." At the Sippo Park meeting, Rider spoke "in regards to the same line of work . . . of trying to urge the men along that wanted to get back to work."

On the same day that Linckenhely had discussed "ways and means" at the Chamber of Commerce, the Law and Order League had retained Elson Wefler and Franklin Maier as its attorneys. On June 25 these two attorneys, with Case, Lester, and other members of the League, came to City Hall and presented to the city officials a petition signed by a number of civic organizations and leading citizens of Massillon. After the petition was read aloud, Maier delivered a speech about the breakdown of law and order, demanded that the city appoint special police, citing its statutory authority to borrow money from banks for that purpose in an emergency, and accused the city officials of refusing to accept the money which the Law

and Order League had raised. Maier also stated that Massillon was losing a pay roll of $40,000 a day and that "he had it straight that if something wasn't done the Republic was going to move their plant out of Massillon."

Switter retorted that there had been no breakdown in law enforcement, that he had received a number of "cock and bull statements, the same as they did . . . of fellows being afraid to go home and being in fights, and being beaten up" but that only a few persons had signed affidavits and filed complaints, and that in every one of these cases an arrest had been made.[24] Switter further denied that the Law and Order League had ever raised any money for special police and called upon Case, who confirmed the Chief's statement. When Hardman spoke, he deprecated the whole petition as "a grandstand play," defied the Law and Order League to prove its assertion that dynamite was being transported through the streets, and denied that the general safety of the city was in peril. Hardman added that the reference in Maier's speech to the loss by Massillon of $40,000 a day "smoked the situation out" and showed that the League was interested, not in law and order, but in protecting the businessmen.

Finally, Switter and Mayor Krier agreed to appoint some more men as special police and the Law and Order League agreed to assist them to borrow money for this purpose from banks in Massillon.

After the meeting, Switter, Case, and Hardman conducted two officers of the Ohio National Guard on a tour of the city to assist them in finding suitable quarters for the troops, if they were called in. The officers inspected a number of possible sites and finally selected an old lodg-

24. Switter testified that there had been fewer arrests during the strike than in normal times.

ing house owned by the city, which Case agreed to equip with refrigeration, gas, plumbing, and water connections, if it became necessary. Subsequently, such equipment was added, and the Chamber of Commerce received a bill for the cost, which at the time of the hearing it had not paid.

At about five-thirty that afternoon, Gordon Hess, the respondent's assistant sales manager, telephoned Switter at Switter's home that he had received information from the respondent's Canton office that between five and ten thousand Akron rubber workers and "Canton C. I. O.'s" were on their way to invade Massillon, and demanded to know what the Chief was going to do. After insisting that "it sounded like more bull we had heard about other invasions," Switter finally agreed to call out the police department. Hess stated that he "would have his gang over there to back (the Chief) up."

When Switter arrived at City Hall, he found a crowd of approximately 200, including foreman Rider of the Back-to-Work movement and a number of the respondent's employees. Rider asked Switter to put in a three alarm signal for the American Legion. When Switter disclaimed any such authority Rider went to the fire chief, who sounded the signal. The crowd in the meantime was steadily growing, until it reached a total of several thousand persons in a high state of excitement. At 7 o'clock, when Hardman arrived, "the atmosphere was very tense . . . so tense that I did not park my car in the business district but drove it out into the residential district so that if there was any trouble the car would not be damaged."

In the Chief's office, a crowd, including Hess, Rider, and J. Lester of the Law and Order League, had congregated. Lester asked the Chief if he wanted him to go home and get a shot gun. Hess "grabbed the telephone and

called up the Canton office of the Republic Steel Company and wanted them to send somebody over to see the enthusiasm that Massillon was showing and what a crowd was backing up the Massillon gang to go back to work." After the call, Hess informed Switter than men from Republic Steel had already been over to see the crowd. Nevertheless Hess procured a newspaper reporter to take pictures of the crowd, telling Switter and Hardman that "it would be great to have a picture showing the enthusiasm of the group . . . so they could show the Republic Steel there was still some interest in Massillon and some life there . . . showing the Republic Company (that) Massillon wanted the steel mill there."

At about 10 o'clock the two National Guard officers who had been in Massillon earlier in the day came to City Hall and wanted to know the reason for such a crowd. When Switter informed them that a mass invasion of Massillon was threatened, they replied that their intelligence division could find no trace of any mass movement on Massillon and "for God's sake to break up that crowd before something happened." Switter then addressed the crowd, thanking them for being willing to back him up on any invasion on the city, and asked them to disperse. Several members of the American Legion approached Switter and Hardman after the meeting and wanted to know why and on whose authority they had been called out, and stated that they did not want to get mixed up in any strike controversy.

On June 27 or 28 Chief Switter asked the Civil Service Commission to certify to him a list of men eligible for appointment as special police. Of the seven certified, Switter chose six, rejecting the seventh because he was a former employee of the respondent, and choosing four other men of neutral feelings. The Massillon police force now had

reached a total of 28.

On June 29 the Back-to-Work Committee, through the assistance of Case, obtained the use of a room on the ground floor of the Union Bank Building as a place where they could set up tables and register the number of employees who wished to return to work. On the following day the Back-to-Work movement began registration. When crowds formed and the police interfered, dispersing them, Linckenhely, Rider, and Case called upon Switter in protest. Case especially urged upon the Chief that a large majority of men, not concerned with the strike, wanted to put themselves on record as desiring to go back to work, "so that there could be some definite assurance given the Republic that if Republic wanted to open the plant, that it could be opened, there was men enough to operate." Switter informed them that he had no objection to their registering employees, but stated that he did not think it was a good idea to use the ground floor. Case then offered the Back-to-Work Committee the use of the offices and facilities of the Chamber of Commerce on the eighth floor of the Ohio Merchants Bank Building, where registration continued from June 30 until July 3. Two full-page advertisements were published in the *Massillon Independent,* over the name of the Back-to-Work Committee, announcing the place and purpose of its work. By July 3, the respondent claimed, over 2200 employees had signed the above-described petitions.

This was "the big move" for which the Back-to-Work movement claimed credit. Linckenhely testified, however, that the Law and Order League had agreed to pay for $75,000 worth of insurance which was to have been taken out to cover property damage to the Union Bank Building; that the League had paid for the mimeographing of the petitions; that the League had furnished without charge

all the desks and facilities for the registration of employees; and that the League had paid approximately $100 for the advertisements of the Back-to-Work Movement in the *Massillon Independent*, although by agreement between the *Independent* and the Law and Order League, nothing in the advertisements indicated that they had been paid for by the League.

Although the question of whether the Back-to-Work movement represented a majority of the employees of the respondent's Massillon Works is not in issue in this proceeding, it is worth noting that among the alleged 2200 signatures are those of a large number of foremen, superintendents, and office workers, together with the signatures of several individuals who signed the same petition as often as four times. Furthermore, the record is plain that supervisory officials of the respondent directly participated in circulating and obtaining signatures to this petition. Thus William Norris, a millwright leader, testified that his general foreman, one Shoemaker, telephoned him to go to the Chamber of Commerce and sign the Back-to-Work petition. Judson Moody testified that his foreman, Ray Henry, called at his house and asked him whether he had signed the Back-to-Work petition. Wilbur Larker, an office employee, testified that he signed the Back-to-Work petition while working in the temporary offices of the respondent in Canton, and that he saw other employees sign the petition there. Nick Linckenhely testified in detail concerning the activities of foremen Rider and Immell as members of the Back-to-Work Committee. Switter testified that Gordon Hess referred to the Back-to-Work movement as his "gang" and sent them en masse to City Hall to back up the Chief on the fictitious invasion of Massillon.

Thus from beginning to end, the "big move" of the Back-to-Work Committee was in reality conducted from

behind the scenes by the respondent and the Law and Order League. Like the discredited Employees Representative Association, of which it was merely a continuation, the Back-to-Work Committee was the creature of the respondent.

In the meantime on the night of July 1, Governor Davey had ordered General Marlin and four companies of the Ohio National Guard into Massillon. Despite previous arrangements to house the troops in the city lodging house, two companies were quartered in the main office of the Massillon Works and the other two in a school house overlooking the respondent's plant.

On July 2 the Massillon Works and the plant of the Union Drawn Steel Company reopened. On the same morning, at the request of Creighton, general manager of the Union Drawn Steel Company, Switter supplied city police in two cruising cars to escort the Company guards and a quantity of arms, ammunition, and tear and vomiting gas, into the plant. One of the Company guards furnished Officer Moore with a few gas candles or jumpers, which were kept in the police cruiser car. Though the plants were open, the strike was still effective. The respondent was preparing for the day when arms and ammunition would be needed.

On July 2, 3, and 4, and thereafter upon the solicitation of superintendents and foremen, who telephoned to the men and visited them at their homes, a number of employees returned to work. Although the record does not indicate the exact number of this group,[25] it is evident that, even under the guns of the National Guard, in the fifth week of the strike, despite the campaign of the Law and Order League and the Back-to-Work Committee, and

25. There is some testimony that approximately 2000 employees returned to work. It is not clear whether this figure included the employees of the Union Drawn Steel Company.

despite the continued solicitation of foremen and superintendents, a large number of men preferred not to return to work but to remain on strike.

On July 5 General Marlin called a meeting of the city officials, told them that the troops were not going to be there forever, and stated that if they wanted the steel mill in Massillon, they would have to be prepared to take over the situation when the troops left. The Massillon Works, he warned them, was the last plant to reopen, and if they did not keep it open they would lose it. Marlin suggested deputizing and arming a group of men from the respondent's plant to be known as "home guards" who on their own time would patrol their respective precincts after work. No definite plan, however, was agreed upon at this meeting.

On the next afternoon a delegation from the Law and Order League, the Back-to-Work Committee, and the respondent called upon the city officials at City Hall to urge upon the Chief the necessity of appointing special police and home guards. The composition of this delegation reveals the close relationship between the organizations. Among those present were R. E. Peppard, superintendent of the billet shops, Perry Angstadt, the respondent's chief accountant, and one Blantz. These three men had been Company Representatives under the Plan. Case and Quigley were present on behalf of the Law and Order League. In addition there was also present Fred Becker, the metallurgist who had been a member of the Back-to-Work Committee since its inception. According to the testimony of Case, however, Becker, together with Peppard and Angstadt, represented the respondent.

Representatives of all three organizations joined in the discussion. Peppard, Angstadt, and Becker asked the Chief to select men from a list of names of 66 of the respondent's

employees, which they submitted, to be appointed as special police to act under Switter's jurisdiction and to be paid by the city. Hardman and Switter examined this list, recognized the names of a number of men they knew, and rejected most of them as being too excitable to act as police officers during the strike emergency.

The delegation then requested that the Chief deputize a group of the respondent's employees as home guards and Peppard offered to furnish a further list of names. To this proposal both Switter and Hardman objected, as Case testified, on the ground that "it was probably undesirable to use anybody connected with Republic although they were men connected with the Back-to-Work movement . . . Hardman said if they did anything like that they should put some C. I. O. men on." The delegation argued that Canton had deputized the respondent's employees as home guards and that Massillon should follow suit. To prove this, Angstadt telephoned the respondent's office in Canton and then informed the city officials that "the city solicitor of Canton was down in the plant then swearing them in." Hardman and Switter, nevertheless, refused to accede to the delegation's request.

At this point there appears, most casually, upon the scene the principal character in the tragedy of bloodshed and violence that was to be enacted on the night of July 11. "During the meeting," testified Case, "Switter made the statement . . . of his inability to get any policemen who were competent and I made the suggestion to him . . . 'How do you stand with Captain Curley or Major Curley?' He said 'All right.' 'Well,' I said, 'I understand from one or two talks I had with Major Curley that there is a method by which you could get the type of people and kind of people that you want and that perhaps he would advise with you on the method.' And he says, 'Where is Major Curley?' "

The testimony is in conflict as to whether Switter then sent for Curley, or whether Curley had already interviewed Switter earlier in the day without any previous communication from Switter. There is no dispute, however, as to the fact that Case suggested Curley to the Chief as the man who would solve the problem of increasing the Massillon police department, or that on July 6 Curley called upon Chief Switter and offered his assistance in helping to secure men for the police force.

Case described Curley as a disinterested, public-spirited citizen, "a former Army officer . . . who had organized two companies in Massillon . . . for the world war, a very competent man along the lines of developing organization, also, a very influential member of the . . . American Legion." To this description of himself, Curley added that he had served in the Spanish American War as a private, in the World War as a captain and major, and was now retired with the rank of major. A disingenuous witness, whose testimony in many respects is contradicted by the testimony of other witnesses both for the Board and the respondent, and whose account of many of the events in which he participated is inherently improbable, he nevertheless furnished testimony which is indispensable to an understanding of the case.

On the evening of July 6 General Marlin, who had attended a meeting on the previous evening of the Law and Order League at J. Lester's home, called on Chief Switter. "He wanted to know why we were backing down and why we had not shown some signs of life in getting this group of . . . mill men they (Peppard, Angstadt, and Becker) certified to me . . . sworn in and getting ready to take over." Switter replied that he was "trying to get neutral men . . . and it was slow picking." "This is no time to pick up neutral men," Marlin answered, "you

have to be ready to take this situation over. . . . I demand you have some plan to certify to me by tomorrow noon so I can report to the Governor." When Switter failed to agree with this, the General left in a huff.

Finally, on the following morning, the leading spirits in the Law and Order League descended upon the city officials. "They demanded we do something about this situation . . . why we had been passing the buck and why we refused to take the special police. They just climbed all over us and demanded some action be taken and threatened to impeach us, talked about getting rid of the Mayor. They talked about getting rid of the city solicitor and everybody else, and they wanted something done, wanted some action . . . (They) said we could get plenty of men there . . . Republic Steel men . . . and I told them that I didn't want those men, that if I was going to have any special police, I wanted to have men on neutral sides that had no argument in the strike."

"Q. (by Mr. Hunt) What was the reply?

A. They said the steel mill was at stake, the City of Massillon was at stake, as far as industry goes, and we would lose the biggest of our industry.

Q. Did they ask you at this meeting if you would accept the assistance of Captain Curley in picking men to add to your police force?

A. Yes they said they knew where to get men and he could help pick the men.

Q. Did you finally agree to take the men right away?

A. No, it got pretty hot in there for the next hour or so.

Q. What do you mean it got pretty hot?

A. Why they were climbing on us to take on these men and wanting a showdown and wanting to know why and fighting with us and asking all kinds

of things and saying all kinds of things against us, why we had done the way we did . . . and why we would not consent to it.

Q. Chief Switter, I have asked you so far merely a few questions about isolated meetings and conversations in the strike situation but weren't you subject to constant pressure throughout the day and night . . .?

A. I did, I worked sixteen, eighteen and twenty hours a day ever since the strike broke, and one time none of the department went home for four days and nights, four nights, only excepting a few hours sleep in the cruising car and I slept on the office floor and the whole department the same way, even the new rookies.

Q. So you were pretty tired at the meeting of this Law and Order Committee on July 7th?

A. We were pretty well pounded down by that time.

Q. By whom?

A. The law and order and the back-to-work movement.

* * * * * *

Q. What did you finally tell the group that you would do about putting on these extra police?

A. I told them that was up to the Mayor and the chief executive of the city to make that decision and they got after the old boy pretty hot and he kind of weakened for the time being and asked me again what we should do. Then they jumped on me and I told them I would give them the works, I would give them what they wanted, I would appoint the whole damn outfit, give them all the guns they wanted and let them go to it, it is coming, and God damn let them have it.

. . .

Q. You could see what was coming?

A. That there was going to be a battle and bloodshed all around as soon as they put guns in those rookies' hands and we had been fighting against bloodshed all the time."

With this agreement reached, the Law and Order League invited the city officials to attend a luncheon that noon to which Case, at Curley's request, had also invited a score of the managers of Massillon's leading industries. Case opened the business of the meeting by announcing that Major Curley had been designated by the Mayor and Chief Switter to make a statement to them about some cooperation that the city very badly needed at that time. Curley then addressed the meeting. He stated that he had consented to render such assistance as he could to the city for the purpose of developing a special police force, totalling 66 men, which would restore law and order in Massillon; that there were a number of men employed in industries who were not connected with the strike, whom he felt would make good special policemen; and that if any of those present had any available men, "we would like to have them sent to us immediately." After this a discussion arose about home guards. Curley stated that he "did not believe that was the need in Massillon, he believed that what they wanted was some special police here for the purpose, who would be deputized and be under the direction of the Chief."

The last speaker was Carl Myers. "He lit on the Mayor and the city solicitor and I," testified Switter, "with all fours . . . He said he had not thought a hell of a lot of us until now and he thought we was beginning to get on the right track now and go along and do something." "He was glad to see the Mayor and Chief had wakened up . . .," testified Hardman, "he roasted them pretty heavily . . . he felt they had not been doing their duty . . . He said he loved Massillon and loved the Republic Steel Corporation.

. . . He dwelt on the fact that the Mayor and Chief had not enforced the law, that they had been asleep and not doing their duty." "The only thing I ever recall," added Case, upon cross-examination, "that Mr. Myers said at that meeting was somebody in the meeting insisted on the necessity of home guards, Mr. Myers made the statement that he felt the whole matter could be safely left with Major Curley, if he didn't need home guards, that was all up to him, *the whole situation could rest with him, he felt.*"[26]

After this meeting, the Law and Order League, its work accomplished, took no further part in the events in Massillon. We pause for a moment at this point to re-examine the role of the Law and Order League and the respondent's relations to it.

Almost from the beginning of the strike, the respondent had made it clear to the businessmen and officials of Massillon that the retention of the Massillon Works, and the very existence of Massillon, depended directly upon their success in breaking the strike. Thus on June 9 Carl Myers had asked Lanham what the businessmen were doing about the strike, whether or not they were interested in keeping the steel plant there, and had threatened Lanham and the city officials that unless Massillon furnished the same kind of protection the Chicago police had furnished, the respondent would move out, and Massillon would be a junction, without even a first class post office.[27] On June 25, the day the Law and Order League presented its petition to the city officials at City Hall, Franklin Maier, attorney for the League, informed Hardman that he "had it straight" that unless something was done, the Republic

26. Italics supplied.

27. On or about June 9 Lanham, Poe, and other members of the League also telephoned to Myers when they heard that "they were going to close up the mill, they were not going to open it up."

was going to move their plant out of Massillon. At the conference with Chief Switter on the morning of July 7, the members of the League had urged in desperation that the steel mill was at stake, the City of Massillon was at stake, and that the business community would lose its biggest industry. The record is replete with testimony that Carl Myers, on numerous occasions, had stated to the city officials that if they did not get the mills open, Massillon would be "a prairie in the junction of route 21 and route 30," that if the plant were lost, the people of Massillon and the city officials would be responsible for losing it, that without the mills, Massillon would need neither a Mayor nor a Chief of Police nor a City Solicitor. General Marlin, who had been in communication with the members of the League and whose troops were quartered in the respondent's main office, pointedly informed the city officials that it was not the proper time to select neutral men as special police, that if they wanted the steel mill in Massillon, they would have to be prepared to take over the situation when the troops left and that if they did not keep the mill open they would lose it.

Under this threat of economic disaster, the Law and Order League, while publicly maintaining that its purpose was to establish law and order, privately set to work with all its power to assist the respondent to break the strike and to reopen the plants. When on June 15, the respondent, over the signature of Girdler, issued its statement that "movements similar to that which resulted in the opening of the Monroe plant are spreading rapidly to other affected communities," the respondent supplied the League with its program and its propaganda.

We have noted above how the Law and Order League assisted and subsidized the Back-to-Work Committee in many of its activities. Becker, Linckenhely and other members of that Committee conferred daily with Lester at his

home and with Case at the Chamber of Commerce with regard to "the big move." So great was the League's anxiety to retain in Massillon the respondent's pay roll of $40,000 a day, that its members contributed within a few days $1200 toward a fund of $8200 to be raised to pay for special police and police equipment. Its concern for the establishment of law and order may be measured by the fact that the $1200 was returned to the members when it was learned that the city officials would not use the special police to break the picket lines. Lester and Lanham frequently acted as go-betweens between Myers and the city officials. Before the National Guard arrived, Case undertook the expense involved in extensive alterations of the municipal lodging house. When the National Guard was preparing to leave, the members of the League resorted to threats of impeachment against the city officials unless they agreed to hire the respondent's employees as special police.

Not the least of the League's functions was to assist the respondent in whipping up public opinion against the strikers and the Union by spreading unfounded statements that the C. I. O. was marching to invade Massillon, that explosives were being transported about the city, and that the strikers had instituted a reign of terror, in which the city authorities were powerless.

Finally, Case and other members of the League, together with the respondent, were successful in having Major Curley, allegedly a disinterested public spirited citizen of Massillon, placed in a position of authority in the Massillon police department, with results which are described below. In sum, what the respondent was unwilling or unable to do openly, it accomplished in part through the businessmen of Massillon, acting under the guise of establishing law and order. Under the stimulus of the respondent's threats to abandon its Massillon plant the League became the respondent's accomplice.

At 3 o'clock on the afternoon of July 7, a crowd of 60 or 70 men appeared at police headquarters, a good many of whom Switter recognized as employees of the respondent. Curley and Switter lined the men up and at Curley's suggestion all those under 30 years of age and all married men with families were asked to step forward. After these were dismissed, a further selection was made from the remainder, and 40 men were finally chosen as special police officers. Before the men were sworn in, Switter testified, there was a slight delay. "The bondsman did not show up and Curley had to contact Gordon Hess and he told him to arrange for getting the bondsmen to come over from Canton to bond the group of men . . . that is who Captain Curley said he was talking to, wanted to speed them up so they could swear them in."

In the light of subsequent events, the method by which these special police officers were bonded deserves careful examination. On July 5, Thomas R. Smith, a member of the insurance firm of Duerr, Smith, Lane Company of Canton, received a telephone call from Kenneth Cope, an attorney whose firm represented the respondent in this and other proceedings, to come to the respondent's offices in Canton and sign some bonds for special policemen. At first Smith refused on the ground that he was forbidden to sign such bonds during a strike, unless the respondent were willing to indemnify the Fidelity and Casualty Company of New York, the bonding company which Smith represented. Later Cope stated that the indemnity agreement could be arranged, and, accompanied by Assistant City Solicitor McCarroll of Canton, Smith drove to the Canton plant of the respondent. There W. C. Gubbins, the respondent's assistant treasurer, and Speis, its chief clerk, were engaged in selecting the men to be bonded from a group of employees. After certain employees had been dismissed as being "too hot-headed," the remainder, 56 in

number, signed application forms and Smith signed, sealed, and executed public official bonds upon which the names of the employees had already been typed. Each bond bound the employee as principal, and the Fidelity and Casualty Company of New York as surety, to the City of Canton in the penal sum of $500, and was conditioned upon the faithful performance of duty by the employee as private police officer of the City of Canton. On the back of each signed application form, Gubbins wrote "Republic Steel Corporation by W. C. Gubbins, assistant treasurer," and agreed that the respondent would indemnify the Fidelity Company for any loss that company might sustain as a result of having acted as surety on the bonds. Assistant City Solicitor McCarroll then swore in the respondent's 56 employees as private police officers of the City of Canton. Of these 56, at least two were Employee Representatives, and two were supervisory officials at the Canton Works.

On the afternoon of July 7, Attorney David Day, of counsel for the respondent, telephoned Duerr, Smith, Lane Company and asked Smith to go to Massillon to sign more special police bonds. Day, Gubbins, and Smith then drove to City Hall in Massillon, where Day inquired of the desk sergeant in the police department for Captain Curley. Curley took the group to Switter's office and introduced them to the Chief who greeted them curtly, and sent them to another room where the men whom Curley had selected were waiting to be bonded. Smith testified that none of the men were rejected, as they had been in Canton, and that the final selection had been made before they came to him. Hardman, Gubbins, and Curley, sitting at a table, assisted Smith in executing the bonds. Gubbins, who had been handed a list, apparently by Curley, of the men to be bonded, inquired of each applicant whether he was an employee of the respondent and, if so, his badge number. Hardman then administered the oath of office to the entire

group as special police officers of the City of Massillon.

Under date of July 6, Smith forwarded to the respondent an itemized bill for $830, covering special police bonds, at a premium of $10 each, issued for 56 Canton employees and 27 Massillon employees of the respondent.[28] On July 13, Gubbins, for the respondent, signed a contract of indemnity whereby the respondent, as indemnitor, agreed inter alia to become surety for the Fidelity Company on both sets of public official bonds.

Of the 27 Massillon employees thus bonded by the respondent, one William F. Henderson, was a foreman, and another, Maurice Schnierly, was an Employee Representative at Canton. In addition to these 27, 13 other men were appointed, making a total of 40 special police officers. Of the 40, the names of 19 had been submitted to the Chief by Peppard, Becker, and Angstadt on the morning of July 7; 24 had signed the Back-to-Work petition; and at least 32 were employees of the respondent.

From these facts it seems clear that Curley knew in advance the employees whom the respondent wished selected as special police officers and that in their selection he acted as the respondent's agent. Curley, however, denied that anybody connected with the respondent had anything to do with his activities, and denied that he knew the names of the 60 or 70 men who came to City Hall on July 7, or what plants they came from or whether they were employees of the respondent. Curley also denied that he knew that bonds were issued for the Massillon employees who were sworn in, or that he had telephoned Gordon Hess to arrange for the bondsmen to come from Canton, but admitted that he had spoken to J. Lester about it. These denials are not convincing. On the morning of July 7, the

28. Smith testified that the bonding of the police occurred in Canton on July 5 and in Massillon on July 6. All other witnesses fixed the date of the bonding in Massillon as July 7.

Law and Order League had demanded and the city officials had agreed that the respondent's employees would be appointed as special policemen, and Curley was in constant touch with Case and other members of the League. At the luncheon meeting of the League on July 7, Curley had rejected the proposal that home guards be appointed, and Carl Myers had approved his action, adding, according to the testimony of the respondent's own witness, "the whole matter could be safely left with Major Curley . . . the whole situation could rest with him." This was tantamount to a ratification of Curley's authority. In addition, before the bonds were signed for the employees in Massillon, Curley either telephoned to Gordon Hess, or spoke to J. Lester about telephoning to the respondent at Canton, in order to hurry the bondsmen to Massillon. Whichever version of this incident we accept, it is apparent that Curley knew, at least after the men had been selected, that they were to be bonded by the respondent. The uncontradicted testimony of Smith, the bonding agent who came to Massillon as a result of a telephone message from the respondent, confirms this conclusion. Smith testified not only that "Curley had mentioned to (Switter) what we came for, to bond the special policemen," but that Curley was sitting in the very room where the men were bonded and where Gubbins was writing down their badge numbers. Furthermore, although in Canton Gubbins had weeded out certain employees before they were bonded, in Massillon he made no such selection and ratified Curley's choice without question. From these and other facts, we conclude that Curley's activities were conducted with the full knowledge and approval of the respondent, that Curley knew in advance and carried out the respondent's wishes, and that the manner in which he selected at least 32 of the respondent's employees of a total of 40 special police was designed to conceal the fact that, while apparently selecting men most

suitable for the position, he was in reality choosing men whom the respondent had already designated.[29]

On July 8 and 9, the National Guard moved out of Massillon and the police department, thus augmented, assumed control. Although there were no city funds to purchase equipment, Switter ordered 30 new sidearms and four dozen new night sticks. By Sunday, July 11, all the special police were armed.

"The breakdown of law and order in the city!" observed Switter on the witness stand. "Not one of these new men were put out where these homes were supposed to have had windows broken out of and men taken out and attacked. The whole outfit was concentrated in the strike zone."

At 2 o'clock on the afternoon of July 11, Switter and Curley drove to the Massillon Works to watch the behavior of the pickets when the afternoon shift of workers entered the plant and the morning shift came out. "The afternoon (shift) went along in fine," testified Switter, "no trouble at all." Curley and Switter then drove to a mass meeting of the Union at Oak Knoll Park, observed the conduct of the crowd, and made several trips to the Massillon Works and the plant of the Union Drawn Steel Company to see that the special police officers were at their posts. At about 5 o'clock according to Switter's testimony, Curley re-

29. Attached to the bill, dated July 6, which Smith sent to the respondent covering special police bonds for 56 employees at Canton and 27 employees at Massillon, was an attached schedule of the names of these employees together with the report numbers of their bonds. With respect to this bill and attached schedule, Smith testified that it was "dated July 6th and it was made in our office at that time, and on the back of this we have attached a list of names arranged alphabetically." The employees named in the schedule were not sworn in until the following day, July 7. This confirms the conclusion that the respondent had chosen the employees to be appointed as special police officers before Curley had lined the men up at City Hall for his "selection." Despite the fact that Smith erroneously described the bonding as having occurred on July 6, we are inclined to consider the bill and attached schedule, which were contemporaneously made, in the regular course of business, as better evidence than oral testimony, given some weeks later.

marked, " 'I will go see that the night shift changes . . . you better get away and get some rest and recreation. You been at it too long. It is getting you down.' I said, 'That is fine, thanks old boy. If you will take over, I am gone.' " With this, Switter left Curley, went home to supper, and at 9:30 that evening drove out into the country with some friends for a few beers and lunch. On the same day, in the belief that the city was quiet, Hardman had left Massillon to visit his wife who was away on a vacation.

Nothing was said, testified Switter, about placing Curley in charge of the police department. "Things were quiet and they were having this meeting and it didn't look like anything was going to happen. It didn't look like there was going to be anything. It went off on the afternoon shift all right and we did not figure anything was going to happen that night."

> "Q. (by Mr. Donald Wakefield Smith) Is it fair to say that you didn't regard this as a matter of delegation of authority to Captain Curley? You merely thought nothing would happen and he would be around there?
>
> A. That is right. He was going to see the new rookies went on the post standing in front of C. I. O. headquarters and there was a viaduct and a couple of men to be posted under the other end of the viaduct, and a couple of other roads supposed to be blocked so no traffic would come through. And that is the way it was supposed to be handled and he was just going to see the men were on their posts and what he could do . . ."

Nevertheless, as soon as Switter had left the city, Curley took complete command of the police force, and countermanded all of Switter's previous orders.

5. The incident at C. I. O. headquarters

At approximately 11 o'clock on the night of July 11, three persons received fatal injuries and an undetermined number were injured by gunfire and gas fumes, when special and regular police officers, under the command of Major Curley, dispersed a crowd of strikers and strike sympathizers at C. I. O. headquarters on Cleveland Avenue near the respondent's district office, in the City of Massillon. All those killed or injured were strikers, strike sympathizers or bystanders. None of the police sustained any injuries.

Witnesses for the Board claimed that Curley in Switter's absence led the special and regular police in a murderous and unprovoked assault on C. I. O. headquarters, pursuant to a plan to destroy the union and break the strike. The respondent sought to show that the strikers had assembled at the C. I. O. headquarters with a preconceived plan to rush the police, enter the mill, and remove the employees who had returned to work. In order to understand the causes of and the responsibility for this encounter, it is necessary first to examine the circumstances immediately prior to its occurrence.

As noted above, as soon as Switter had left the city Curley, without authority, took command of the police department. He testified that at about 9:30 p. m., when he walked over to City Hall, "the boys were getting ready to go on the 10 o'clock shift. They all came in and reported for duty. A lot of rumors flying around there that in the afternoon meeting which they had at Oak Knoll Park and they were going to come down and clean up the Police Department. I said 'Hell, I have heard that so often . . .'[30]

30. The Trial Examiner granted a motion by the Board's attorney that this latter remark be stricken from the record. In our view of the evidence, the remark is relevant as showing the unimportance which Curley attached to the rumor. We hereby overrule the ruling of the Trial Examiner.

They all came to me—I didn't know—for orders. They said 'What will we take along?' I said 'Hell there aint anything to take along . . . There is some gas in back of the Sergeant's desk there. Some gas guns.'" To this elaborate expression of unconcern Curley added, however, that the police officers took "everything we had . . . tear gas . . . five tear gas guns . . . and a submachine gun." Officer William Fellabom, a former machine gunner who served in the World War in the company which Curley organized, testified that at 9:30 p. m., when he reported to the police station, "Curley was in there and as soon as he saw me he says 'Bill, you better take your machine gun along tonight. They expect a lot of trouble so I takes the machine gun and some ammunition there we had and they hustled us right down there.'" From the testimony of other witnesses, it is clear that the police also took the 90 gas projectiles, six combination shells, and other equipment which Lieutenant Adler of the respondent's police and Chief Deputy Sheriff France had transferred to Switter for the police department at the Brookside Country Club on the night of June 9.

Officer Ickes, a witness for the respondent, testified that when he reported for duty at 9:45 p. m., Curley countermanded Switter's order of the previous evening assigning Ickes to the plant of the Union Drawn Steel Company, and ordered Ickes and special officer Kelleher, one of the respondent's employees, to a post on Cleveland Avenue, 50 feet south of C. I. O. headquarters. The usual number of police assigned to this post was six. Curley admitted that after 10 p. m. the number was increased to 20, explained that he had countermanded Switter's order with reference to Ickes only because the plant of the Union Drawn Steel Company was not working that night, but denied that he had assigned more than two or three additional

police to Cleveland Avenue.[31] From the testimony of other witnesses for the respondent, it is clear that Curley's testimony is not to be credited. Officer Fellabom testified that "before we left the station Curley says 'I will be over there, close to where the line is or close to the C. I. O. headquarters . . . I want to see you over there . . . You fellows will have to be stationed over there until things quiet down.' " Officer Kraft testified that Curley had sent eight or nine police officers to C. I. O. headquarters that evening in addition to those already assigned. Furthermore, Switter testified that when he returned to Massillon on the next morning, Captain Curley informed him that "he had raised the normal guard which was usually stationed about 50 feet in front of the strike headquarters from six men to 20 men." In view of this testimony, we conclude that Curley, upon his own authority, at approximately 10 p. m. armed the police with all the weapons in the possession of the police department, including the gas donated by the respondent, and ordered the normal guard on Cleveland Avenue near C. I. O. headquarters raised from six to 20 men. Of the 20, the record indicates that at least eight were employees of the respondent, including foreman William Henderson.

As already indicated, Curley, in justification for his having armed the police, offered the rumor that in their afternoon meeting at Oak Knoll Park, the strikers had threatened to "come down and clean up the police department." It is clear that nothing occurred at this meeting to warrant the rumor. Edward Davies, an employee of the First Savings and Loan Company, testified for the respondent that he attended this meeting, that he heard Joe Morton speak, that "Morton made different statements in

31. Curley's testimony on this point is confused. At times, he appeared to admit having assigned all the additional police to Cleveland Ave.; at one point he claimed that Officer Ickes was "about the only one he assigned."

regard to the men that they should fight on, that they are bound to win the strike . . . that they should be down that night at 11 o'clock on the picket line." On cross-examination, Davies admitted that the meeting was perfectly peaceful, and that the general tenor of Morton's speech was merely such that "if I were . . . on the striking side, (it) would help me to feel I was justified and I wanted to continue . . . out on strike." Moreover, Switter testified that before he left Massillon at 9:30 p. m. on July 11, he had heard no rumors of any kind with regard to threatened activities of the strikers. Finally, even Curley himself attached no importance to the rumor. He admitted that between July 7, when the special police were sworn in, and July 11, before he assigned additional police to Cleveland Avenue, there had been a decrease in the number of arrests and the amount of difficulty, that on the afternoon of July 11, when Switter left Massillon, "everything seemed to be all right," and that on the evening of July 11 he did not expect any trouble. We are therefore unable to believe the explanation offered by Curley for his orders.

At approximately 10 o'clock, the 20 officers reported to their posts at or near Cleveland Avenue. In order to understand the events which took place after their arrival, a brief description of the locality is necessary. C. I. O. headquarters is a rectangular two story wooden frame building, with three front doors and three windows, facing west on Cleveland Avenue. Three steps, each about a foot high, lead up to the front doors. The union occupies the lower floor of the building, and had established a soup kitchen there to feed the pickets. The second story is occupied by the family of Wilbert Coleman, a non-striker who appeared as a witness for the respondent. About 100 yards to the southwest of this building lies the respondent's district or main office. About 350 yards to the southeast, on Oberlin Avenue, there is a viaduct over which a number of em-

ployees drive to work. Gate No. 1, the entrance to the sheet division of the respondent's plant, is located on Oberlin Avenue, approximately 175 yards west of the viaduct and about the same distance southeast of C. I. O. headquarters.

Immediately upon their arrival at C. I. O. headquarters, the police, pursuant to Curley's orders, prepared for trouble. Officer Ickes testified that from the time that he arrived on the scene, between 9:45 and 10 p. m., he expected trouble because otherwise "I would not have been sent down there." At that time, he testified, he procured from the police car a tear gas gun and nine projectiles, loaded the gun, and stationed himself across the street from C. I. O. headquarters. The other special and regular police officers, all armed with police clubs, revolvers, rifles or gas equipment, took posts on Cleveland Avenue, between 50 and 100 feet south of C. I. O. headquarters.

Curley directed Officer Fellabom to station himself, with his submachine gun, directly across the street from C. I. O. headquarters. Officer Fellabom testified:

> "As Curley said *when I took the gun,* he says 'Bill what kind of ammunition have you got in there' . . . I said 'Nothing but bird shot and paper shells.' He said 'That is right; that is right; use them in there, Bill.' "[32]
>
> "Q. What time did he tell you that?
>
> A. *Right after I got out of the car when we landed there.*[33]
>
> Q. What time was that?
>
> A. A little after ten; about 10 or 15 minutes after ten.

32. With respect to the ammunition with which the submachine gun was equipped, Curley testified that it always had three magazines of "regular 45 bullets" and three of "45 bird shot . . . a paper shell on the end of it with about nine little shot in them."

33. Italics supplied.

Q. When did Captain Curley tell you that he expected trouble?

A. At police headquarters.

Q. What time was that?

A. Ten minutes after ten.

Q. What time was that?

A. Ten minutes to 10."

At another point, Fellabom testified:

"Q. Now when you got there did you see any other officers there?

A. Oh, there was at least 16 or 20 . . . Curley . . . told me to get over on the left hand side, kind of southwest of where we stopped.

Q. Where did you go then . . .

A. Over to the left hand side, that would be the west side of the street, up close to this tile building that is right pretty near straight across from C. I. O. headquarters."

It thus appears that at least three quarters of an hour before any shooting or any violence whatsoever occurred at C. I. O. headquarters, Curley directed Fellabom, the former army machine gunner, to take a post directly across from C. I. O. headquarters and to use his submachine gun.

We turn next to a consideration of the number and attitude of the strikers and strike sympathizers who congregated at union headquarters that night.

John Veto, a striker, who during the strike made it a practice to go to C. I. O. headquarters every evening, testified that at 8 p. m. on July 11, "when I reached there, they were playing music and the people were dancing on the street and I danced too, and we had a lot of fun. Then the rain came and a lot of people went into the kitchen and a lot of others were on the other side of the hall . . . the music was playing in there . . . in the hall . . . on the north

side. We were talking together and having a lot of fun. Then the rain stopped and all of the people went out again, and the music went out again and the people went on the street just the same as they did before . . . I stood right there on the platform . . . And on the bottom step there was a guy named Ruttenberg. And I believe Frank Hardesty was there. He was right on the sidewalk, I kept waiting around there and hearing the music. When I turned around on the south side there were 12 police over there. They was talking together. Pretty soon another car came and let three more out. As soon as the three more came, they all went together and talked together . . . Then another car came and let three more down . . . Three more special policemen. The fourth car came down there and it was a Massillon police car . . . Well, I stood there, you see, and there were two police on the corner of Cleveland and Oberlin Avenue—that is near the plant and they were coming up toward the north where the other police were. They began to spread from this point here (indicating) across the street . . . they lined up."

Frank Hardesty, sub-regional director of the Canton-Massillon area for the S. W. O. C., who arrived at C. I. O. headquarters at approximately 9:45 p. m. testified that at that time there were 50 or 60 pickets at strike headquarters. "I went in the large room where they had to feed the pickets and there was music in there. There were four or five young fellows in there playing music and entertaining the pickets and having a very good time . . . We went down to a soft drink stand . . . stayed there five or ten minutes, and then we started back. When we came out of the building it immediately started to rain very hard . . . After it quit raining we came to strike headquarters. And the music and things were going on as usual."

At a few minutes before eleven, continued Hardesty, "the pickets changed their shifts and there were more men

there . . . inside and outside the strike headquarters . . . I suppose there were possibly 125 or 150 men there at that time . . . I talked to some of the boys again. The music was still going on." Other witnesses for the Board estimated the number at strike headquarters in the vicinity of 11 p. m. as between 175 and 200.

Several witnesses for the respondent confirm and amplify this description. James Adams testified that at 9:30 p. m. he visited Wilbert Coleman, who occupied the rooms above the C. I. O. headquarters. "When I got there," he stated, "why the men was out in front and one of them had one of these big bass fiddles and he was playing that . . . a large crowd was out there . . . There was nothing—just talking—I didn't pay much attention to it . . . Then it sprinkled a little bit and they all went inside . . . I could hear the stamping and moving about inside." Wilbert Coleman on cross-examination added:

> "Q. (by Mr. Lauter) Now you said something about a crowd being up there on Sunday evening. Was that a customary procedure?
>
> A. Yes on Sundays they gathered around there and chattered around between themselves; more usual on Sunday evening.
>
> * * * * *
>
> Q. Until the first shots were fired, everything was peaceable there?
>
> A. Yes.
>
> Q. Was there anything unusual about the crowd? Noisy or anything?
>
> A. They were just talking; you could hear them talking."

The police, however, sought to picture the crowd as a desperate, threatening mob. Thus, Officer Ickes testified that at about 10 p. m., when he arrived at Cleveland Avenue,

he saw between 300 and 350 people in the vicinity; that at approximately 10:30 p. m. some unidentified man yelled "Let's get the police. Let's get them sons of bitches"; and that he walked down Cleveland Avenue for a police car to take the men away but that when he returned the men had gone. Officer Fellabom testified that C. I. O. headquarters was packed full of men. "I could hear them saying 'Come on boys, let's go through. We might as well cramp them sons of bitches down. We might as well die now and get it over with . . .' And he seemed to be a little intoxicated—a man with a white shirt and a straw hat. Then Curley . . . hollered over to the C. I. O. headquarters —he says 'A couple of you men take this man out of here before he starts to make any trouble.' " According to Fellabom, this incident occurred immediately before the shooting. Curley testified, however, that a group of officers, including Officers Ickes and Fellabom, informed him at approximately 10:50 p. m. that there had been "a couple of drunks" that were getting unruly and ought to be taken away but that they had not seen them for some time.

It appears that all three witnesses have thus described the same incident. On cross-examination Ickes stated that the men were talking in foreign languages, "I could understand that when they said 'Let us get the police' but I couldn't understand the rest much." He added that these words were spoken in English and were the only words he understood. If Ickes' statement is true, then Fellabom's version must be regarded as embroidered. In any event the entire incident was considered so unimportant that neither Kraft nor Kelley, the other officers described as having been present, mentioned it in their testimony, and Curley himself merely referred to the men as a "couple of drunks that were getting unruly and ought to be taken away." All witnesses who testified to the aileged incident are agreed

that within a few minutes after its occurrence the men disappeared. As noted above, the men were not identified.

On the other hand, Officer Johnson testified that there were between 250 and 300 people present that night; that 200 people was not an unusual number on nights when dances were held at C. I. O. headquarters; that, although he did not hear any music, the crowd was just moving around as any crowd of 250 people would do; and that he noticed nothing unusual about their appearance. Johnson also admitted that, although he did not see any women and children present before 11 p. m., he observed three women emerge from C. I. O. headquarters at 11:10 or 11:15. Officer Ickes testified that when he arrived at Cleveland Avenue at 10 p. m. and saw a crowd of approximately 350 people, he noticed women and children among those present and that women and children were among the crowd when the shooting began. Even Officer Fellabom admitted that, except for "a load of drunks" whom Johnson arrested and the remarks of the intoxicated man with the white shirt and straw hat, the crowd was perfectly peaceful.[34]

In addition, the record demonstrates that none of the strikers were armed. None of the police or other witnesses for the respondent claimed to have seen sticks, guns, knives or any other weapon in the crowd during the entire period

34. Officer Johnson testified that between 10 and 10:20 p. m. he stopped a car containing six men, driving up Cleveland Avenue, and asked the men their business. "They said they were C. I. O. men from Canton . . . going up to the C. I. O. Hall . . . They stepped out of the car and I searched them, searched the car for weapons, but they didn't have any . . . (I) took them down to the police station and signed an affidavit . . . and locked them up in jail." The arrest was occasioned by the fact that a proclamation of the Sheriff of June 25 forbade all persons from entering the vicinity of strike areas except on lawful mission. The testimony is in conflict as to whether the proclamation and an injunction of the same date issued by the Court of Common Pleas of Stark County apply to the City of Massillon, where the above-described incident occurred. There is no testimony whatsoever in the record, except for this passing reference by Fellabom, that the men were drunk. The Trial Examiner ruled that similar testimony given by Curley with respect to the incident of the car from Canton be stricken from the record as having no connection with the issues in the proceeding.

prior to the encounter. As set forth below, of 165 persons arrested shortly after the encounter, only one, Harry Jones, was found by the police to have had even a pocket knife, and Jones testified that it was a knife which he had been accustomed to carry for 4 or 5 years, and that on the night of July 11 he was unaware of the fact that he had it.

We conclude that the crowd which gathered at C. I. O. headquarters from 8 to 11 p. m. was an unarmed, peaceful assembly, composed in part of women and children, engaged in playing music and dancing and other activities usual to a Sunday night gathering.

At approximately 10:40 p. m., while the police with loaded gas guns and other weapons described above were stationed across the street from C. I. O. headquarters, a collision occurred at the corner of South Erie Street and Oberlin Avenue, a third of a mile distant from Cleveland Avenue. Because of the unreliable and conflicting testimony given by the witnesses for the respondent, the exact circumstances of this collision are not clear from the record. Certain facts, however, are undisputed. It appears that an automobile crashed into an abutment near the viaduct. Almost immediately another car bearing a C. I. O. sticker collided with the first car, with the result that the viaduct was temporarily blocked. The driver of the first car was taken into custody by several officers; the driver of the second car attempted to run away, but some one in the crowd in front of a beer garden located on the northwest corner of Erie Street pointed out the fugitive to Officer Mantasch, who pursued, fired one shot and captured him. Thereafter several unidentified numbers of the crowd threw stones and beer bottles at other cars. Mantasch testified that Officer Schwinger fired "some shots at some guy who threw stones" and that Officer Davenport shot off a riot gun to scare a man hiding under the viaduct. It ap-

pears that several shots were fired, all by the police, shortly before 11 p. m.

In 10 or 15 minutes the crowd was dispersed, the cars which had collided were pushed off to one side of the road, and traffic at that corner was resumed. Officer Mantasch took the drivers of the two cars to the city jail and locked them up. The man whom he had pursued gave his name as Flores and said that he belonged to the C. I. O.

Apart from these facts, the record provides no clear picture of what occurred at the viaduct. Thus Officer Mantasch on direct examination testified that at 10:15 p. m. when he arrived at the corner of South Erie Street and Oberlin Road, "I wouldn't exaggerate, I would say (there were) around a thousand people around the streets with automobiles" and several hundred gathered in front of the beer garden. On cross-examination, he testified with reference to the size of the crowd:

"Q. (by Mr. Lauter) You are sure there weren't more than a thousand?

A. Might have been more.

Q. About 1500?

A. Might have been more . . .

Q. Might have been three or four or five thousand?

A. I didn't count them . . .

Q. There is no limit to the amount of people that might have been there?

A. That is right."

Charles Moorhead on direct examination testified for the respondent that between 10:20 and 10:45, before the shots were fired by the police, he saw a large number of people milling around and talking at the east end of the viaduct. The number, however, he estimated as "in the vicinity of 40." Officer Moore, another witness for the re-

spondent estimated the number as 300. Moorhead further testified that he saw a group of 20 or 25 men rush out from between houses near the viaduct and throw stones at 10 or 12 automobiles; that, after this, he saw Harold Rinke, a member of the C. I. O., and heard him say "Come on boys, let's get the other side. We are going to town"; and that about 100 men then followed Rinke in a northerly direction.

On cross-examination, Moorhead radically altered a number of these statements. He admitted that he had seen three or four cars stoned, instead of 10 or 12, asserted that there were about 100 men throwing stones, but admitted that he had not seen anyone breaking windows or glass on the cars, although he had heard the crash. With respect to Harold Rinke, he testified:

> "Q. (by Mr. Lauter) You weren't able to identify any of the hundred men?
>
> A. That is right; only one I saw but I didn't see him throw any stones.
>
> Q. You didn't see Harold Rinke?
>
> A. No sir.
>
> * * * * * *
>
> Q. The only man you knew was there was Harold Rinke and you didn't see him throw any stones?
>
> A. I didn't see Harold throw any stones."

Moorhead first asserted, and then denied, that he knew that the hundred men were members of the C. I. O. and added that there were present a number of the respondent's employees other than the members of the C. I. O. On redirect examination, he stated that he had recognized Harold Rinke sitting in a car. It is apparent that no conclusion can be drawn from the testimony of this witness.

Other witnesses for the respondent throw little, if any, further light upon this incident. In addition to Flores, only two or three members of the C. I. O. were identified

by name or otherwise as having been present at the viaduct during this period. There is no evidence whatsoever that these two or three threw stones or committed any acts of violence.

As a consequence, however, of the shots fired by Schwinger, Mantasch, and Davenport, the police on Cleveland Avenue, already instructed by Curley to prepare for trouble, began to grow restless. "It didn't look so good" testified Officer Kelley, "the fracas in the viaduct and the stones and the two men in the cars on the bridge." Kelley added that he had heard shots from the viaduct, but did not know that the police had done the shooting.

From this description of the incident at the viaduct, we return to a consideration of the events that were occurring in the meantime at C. I. O. headquarters. The nature of these events, which precipitated the fatal encounter, was one of the most controverted questions at the hearing, and even their sequence, as presented by witnesses for the Board and for the respondent, is in considerable conflict. We turn first to the testimony of witnesses for the Board.

All of the witnesses for the Board testify that immediately preceding the encounter an automobile drove up and parked among several other automobiles directly across the street from C. I. O. headquarters. Martin Beckner, vice president of the Canton Lodge of the S. W. O. C., testified that at this time he was standing in the doorway of C. I. O. headquarters and noticed the police "deployed across the street and some spread out and some closer than others, and I noticed there was something unusual about them . . . They all had guns, but up until that time they only had clubs . . . It appeared they were nervous, acting like men expecting something, and from the way they were acting I went into headquarters and asked the president of the Massillon Lodge if that was their usual method of conducting

themselves . . . We decided that these were new men and we had better ask the pickets outside to go home . . . So the president of the Massillon lodge stepped out to tell these men to go home and when he went out the door, I stepped outside the door and stood on the step and Harold Ruttenberg was standing in the door way . . . A car pulled up across the street and two men came out and Bill Henderson . . . a chipper foreman in the Massillon plant . . . and the other policeman came forward toward the car. I didn't know who the other man was, but they told the drivers to put those damn lights out or they would shoot them out . . . The car was across the street about 50 feet further down.[35] The man switched out the lights and these two officers started back toward the line of police and someone in the crowd of pickets yelled 'Whoopee' or something . . . and these officers immediately dropped to the ground and someone said 'break them down and let them have it,' and the shooting started about fifty feet down from the strike headquarters on the southwest corner." It will be noted that Beckner testified that the shooting began in the immediate vicinity of the parked car whose headlights the police had ordered to be turned out.

Frank Hardesty was also standing on the steps at this time in the midst of a group of 20 or 25 men. He testified that a car drove up on the opposite side of the street. "His car was headed, or his lights were headed toward the mill . . . What I noticed particularly was that the lights were shining on the policemen down there and I suppose they were more or less frightened being new men. They acted kind of nervous anyway . . . and one of them shouted 'Take the lights off' . . . I saw the fellow cut his lights off, when they hollered at him . . . It was only a few seconds after

35. Other testimony in the record indicates that this car, driven by Harry Jones, a striker, was parked approximately 20 feet south of and across the street from C. I. O. headquarters.

that until one of the policemen hollered 'Let them have it break it down.' I saw one policeman drop down and start shooting."

John Veto testified that about 20 police lined up across Cleveland Avenue "and then a car came up there with their headlights . . . from the north coming south, and they had the lights toward the police there. While the light was flashing, I saw a machine on the other side of the road, the police side . . . Two cops stood up and they went forward and I heard them say 'Shut the lights off.' Well the car shut them lights off . . . and they took a couple of steps backwards and they said 'Let's bust them up boys.' And then they dropped flat." Veto identified one of the advancing policemen as Bill Henderson. "Then a shot came by just where I was standing."

Walter Meyer, a striker, who had driven in his automobile to Canton with his wife and Mr. and Mrs. Wincek to attend a union meeting at Sippo Park, returned to Massillon shortly before 11 p. m. "After we went out in the evenings we always stopped and got a bowl of soup or lunch or something before we turned in for home, but this evening I was broke and Mr. Wincek didn't have much money either and when they mentioned about getting a bowl of soup at C. I. O. headquarters on Cleveland Avenue at Massillon we figured it would be a good place to go and get something to eat before we went home, so we all agreed to do so . . . and we drov. down Cleveland Avenue north and pulled right directly across from C. I. O. headquarters and parked."

"Q. (by Mr. Lauter) In the direction of the mill, is that right?

A. The mill is directly south, in my estimation from Cleveland Avenue and the C. I. O. headquarters is on the east side of the street, and I parked directly

across the street which is the west side . . . I noticed there was a fire plug back of me, so I pulled up six or eight feet from it and parked. We were there for some time and quite a few people were standing around there talking and having a good time, and we were discussing whether we wanted to go in and get a bowl of soup or go back home . . . So while I was discussing that with them, I seen a car coming down Cleveland Avenue and passed our car and pulled in directly ahead of us and passed the fire plug and parked directly ahead of us.

Q. Was that on the same side of the street you were?

A. The same side of the street, and I judge it was 20 feet between my car and this man's car. The man pulled up and he shut his motor off and I heard the cops holler 'Turn them lights off.' I don't think the man heard the cops when they called the first time. Well, the man was getting out of the car, and he stepped on the pavement and they hollered a second time 'Turn those lights off or we will shoot them off.' So the man reached in and shut them lights off and he started toward the C. I. O. headquarters . . . Well we sat there with the windows all down and after this man left that car, I turned around toward Mr. and Mrs. Wincek and my wife and asked them the last time what they intended to do, if they wanted to go in and get a bowl of soup or if they wanted to go back home. While they were arguing about it, at that time, I heard the motor start in the car ahead of me and I looked around quick and I seen his bright lights were on, and without warning, there were two shots fired and the shots sounded as though they hit the car ahead of us, and I surmised that they were shooting at the man's lights because they had said before they were going to

shoot the lights off and just at that time the shots were fired, it all happened I heard the cops holler 'The God damn hunkies asked for it, let us give it to them' . . . It was just like a hail storm hit my car, sounded like machine guns and shot guns, it sounded like the Fourth of July or something at the lake and I seen all the people just pick up and run and run around corners, anywhere, they could go, and after that why the shooting kind of quieted down."

Harry Jones, a striker, was the driver of the car referred to in the foregoing testimony. He testified that "I drove down and pulled up right across the street from headquarters . . . and parked my machine. My brother-in-law and another young fellow were along . . . "

"Q. (by Mr. Lauter) When you pulled up in your car where did you stop?

A. Right across the street from headquarters . . .

Q. Was that in front of the fire hydrant or back of it?

A. It was just in front of it . . . My brother-in-law said 'Someone hollered to turn the lights off.' I turned off the lights. He said 'You better turn them on dim.'

Q. By the way, are you a little hard of hearing?

A. A little yes. That is the reason I didn't hear him. But my brother-in-law heard him and he told me . . . So I got out of the left side of the car and turned them on. And my brother-in-law and the other fellow got out on the right. I suppose I took two steps, far enough to open the door and shut it, and I looked down and seen the policemen. I turned around and got in the car and pulled the dim lights on. When I went to pull the dim they just flickered and I pushed them back . . . (The lights) flickered so I got out of the other side of the car. I reached in and turned the

lights off and I stood back from the car. Just as I got back from the car, the shooting started . . . When they (the police) started to shooting I jumped in a doorway. I stood there for about a second or about a minute, I suppose, until the first volley was over. I got down and went around the corner and faced the police. I waved my hand and I hollered 'For . . . sakes stop shooting until I get my machine out of here' So I ran back to the car and started the motor. And then I went to pull on the dim lights and it flickered. As she flickered a shot hit the windshield and glass flew in my face and I ducked."

The police version of the incident of the headlights differs sharply from that of the strikers. Curley testified that the headlight was shot out at 11:15 p. m., approximately 15 minutes *after* the shooting elsewhere had begun. "The fellow drove up with a car and he flooded all the police officers out there with all of the bright lights and just scattered the lights all over the whole area. And Fellabom says 'Turn out those lights.' The fellow turned out the lights and got right back in and turned them back on again and Fellabom says 'If you don't turn those lights out, I will shoot the damn things out.' The fellow didn't turn them out, so Fellabom just shot one out."

Officer Fellabom was standing on the west side of Cleveland Avenue "pretty near straight across from C. I. O. headquarters." On direct examination he testified:

"Q. (by Mr. Pontius) Something has been said with respect to an automobile that ran up in here. Did you observe it?

A. There was a car coming in there just before the trouble started (the shooting at approximately 11 p. m.) I should judge about maybe five minutes before . . . This car came down in there and whoever was driving it pulled over to the right hand curb and he

had his bright lights on. Some one hollered over there to put those lights on and someone else hollered over the C. I. O. headquarters 'Turn them on and keep them on.' Of course, the illumination was pretty bright there for the boys that was on the road there. This young fellow parked his car right along the curb, right near this tile building, and he still had those lights on. Then he jumped out of the car. Somebody hollered 'Turn them out or we will shoot them out.' So I shot out one of the headlights. After he ran away from the car he left it sit . . .

Q. Was that before the other trouble occurred that you described?

A. That was before the trouble started.

Q. What instrument did you use to shoot the headlight out?

A. A machine gun.''

On cross-examination, however, Fellabom materially changed his story.

''Q. (by Mr. Lauter) Before that (the shooting which occurred at approximately 11 p. m.) you had shot out the lights in the car that was standing in front, is that right?

A. That was *after* I shot toward the door.

Q. What is that?

A. That was after I shot at the door. You see, the car was standing in there with the lights on and the young fellow, whoever it was, he was in the car and left it and then he came back and then he left it for the second time. I think it was some time after the shooting from over the door that the headlight was shot out.

Q. About what time did you shoot the lights out from the car?

A. Oh that might have been 11:30 along in there.

Q. What time did the man drive up with the car?

* * * * * *

A. Just before 11; around 11 o'clock.

* * * * * *

Q. The lights were shining on the police all that time for 35 minutes?

A. Yes.

Q. You walked over to the car 35 minutes after the lights had been on and told them to turn that off?

A. I told them to turn that off?

Q. Who did?

A. Some one hollered to turn them off. He jumped off the car and left them on and someone hollered, 'You better put them lights out or we will shoot them out.' He jumped in the car and then left the car. That is when the trouble started.

Q. You didn't shoot the lights out then?

A. No sir.

Q. You waited around 35 minutes before you started to shoot them out?

A. At least 35; 30 or 35."

It will be noted that on cross-examination, Fellabom not only claims to have shot out the headlight after the shooting elsewhere began, but denies Curley's explicit statement that Fellabom commanded the occupant of the car to "turn those lights out or I will shoot the damn things out."

On the other hand Officer Kelley, who was standing with Curley on Cleveland Avenue, testified the headlight was shot out as Curley was advancing up Cleveland Avenue, a few seconds before the general shooting. Officer Johnson testified that he arrived at Cleveland Avenue after the shooting had begun and that no headlights were shot out at 11:35 p. m. or at any time after his arrival.

We are convinced that the testimony of Curley and the testimony of Fellabom on cross-examination, with regard to the time the headlight was shot out, is not to be credited. On the other hand, apart from their testimony with regard to the time Fellabom and Curley appear to have accurately described the details of the incident. Hardesty, Beckner, and Veto stated that after the police had shouted to Jones, he turned the headlights off. It is apparent from their testimony, however, that they did not see the headlights turned on again or Fellabom fire his submachine gun at one headlight. From Jones' testimony, it is not clear whether he saw or heard Fellabom shoot out the headlight after he claims to have turned the headlights off. The entire incident occurred within a few seconds, and it must be remembered that Jones was hard of hearing, and Hardesty, Beckner and Veto were, at the time, standing in front of C. I. O. headquarters, where their opportunity to observe the events on the other side of the street was limited.[36] Curley's and Fellabom's testimony that Fellabom fired shots at the headlights because they had not been turned off, is obviously the more reasonable of the two descriptions, since Fellabom would hardly have sought to eliminate a glare which no longer existed. In addition, the testimony of both Curley and Fellabom with regard to the details of this incident is supported by that of Meyer, whom we regard as the most accurate and reliable observer of the events in his immediate vicinity.

From all this testimony we conclude that as Curley and Henderson had advanced approximately 50 feet toward C. I. O. headquarters Fellabom fired several shots at the head-

36. Fellabom testified that from where he stood on the west side of the street, his view of the doorway of C. I. O. headquarters was blocked except for the top two feet of the doorway, by a tarpaulin-covered truck, standing in front of C. I. O. headquarters. Presumably the view of Hardesty, Beckner, and Veto with respect to the activities of Fellabom on the opposite side of the street was similarly blocked.

lights of Harry Jones' car, and that immediately thereafter the police opened fire at the strikers.

At the first volley, it appears that the crowd stood incredulous and then fled in utter and bewildered panic. Hardesty was standing on the steps of C. I. O. headquarters. He testified that a few seconds after the headlights went off "I heard someone shout again. 'Break them up! Let them have it!' And they started to shoot. However I didn't move immediately because not being used to riots and things of that sort, I really thought they were just shooting dummies. I thought it was more or less of a bluff. But it wasn't very long until I found out they were really shooting bullets . . . "

"Q. (by Mr. Hunt) When you say they were shooting bullets, to whom do you refer?

A. The policemen.

Q. Where were they from C. I. O. headquarters?

A. They were about 50 feet down the street towards the steel plant. I saw a policeman go down like this (illustrating) and start to shoot. At first, I couldn't really believe they were shooting real bullets into a crowd of men like that, until I really heard the bullets flying and the bullets flying off the building . . .

Mr. Edwin S. Smith: Let me get this straight. Was this crowd of men standing between you and the policemen and you were in back of them?

A. No, I was right in more or less mixed in with the men. There were some of the fellows who were behind me and some of them were in front of me. We started to move up the street. I had not moved far at all until one fellow hollered he had gotten shot in the shoulder and he threw his hand over his shoulder.

Mr. Edwin S. Smith. What did he say?

A. He said 'They got me. I am shot.' There were three or four friends with him and they grabbed hold of him and took him along with them.

Q. Let me understand this. You were running up Cleveland Avenue.

A. We were running up the street from the mill, up Cleveland Avenue. I had not run very far until I saw another man lying on his face with his hands outstretched, motionless, who had been shot by the policemen and from the way he was lying there, there was no doubt, or I thought he was dead, and I guess it did turn out that he was dead. So we kept running up the street until we found an opening in the fence. After I got there, Martin Beckner and another fellow drove up and on. Beckner was hanging on the running board of the car and he stopped and we got into the car and went back to Canton.

* * * * * *

Q. Did you on the evening of July 11 at any time see any shooting at C. I. O. headquarters?

A. I did not.

Q. Did you see any persons other than police using any weapons?

A. I did not."

Marvin Beckner who was standing on the steps of C. I. O. Headquarters had a similar experience:

"Q. (by Mr. Lauter) Was there shooting by anybody else?

A. Shotguns, machine guns and bullets from these special policemen located south of strike headquarters.

Q. At any time you were on the scene did you see any shooting from C. I. O. headquarters?

A. There was not.

Q. During the entire evening did you see or hear any shooting by any of the C. I. O. men?

A. No sir.

Q. Did you see any shooting by anyone else besides the police?

A. I did not.

Q. Describe what happened after the shooting started.

A. When they started shooting I went around strike headquarters on the north side of the building until I came to a lane running parallel with Cleveland Street . . . and seen some people from Canton in a car with two women and I told them to get the women out . . . because I didn't want to see the women shot . . . I went toward the Massillon headquarters and saw a man lying face down in the street and every once in a while the police were shooting gas shells and I said 'Let's get that fellow out' and we carried him up to the corner of Cleveland Street and McKinley Avenue and a car came up with two men and two women in it (the Meyers and the Winceks) . . . We stopped the car and put the man in it and a second man had fallen and we picked this man up and he had been hurt in the shoulder . . . and by this time the special police started shooting at us and we started to McKinley Avenue . . . the special police men were lined up on the west side of the street and some were still coming up Cleveland Avenue shooting gas shells and buck shot and these other policemen lined up across from the strike headquarters and every once in a while you could hear the gas guns and these special police went on up to another street running parallel with Cleveland Street and I seen this car with the Canton people in it and asked them to take Mr. Wilson—that was the name of the man that had been shot, and another car came along and I got on it and we drove back to Canton."

Walter Meyer, his wife, and the Winceks were seated in a car outside C. I. O. headquarters:

"Q. (by Mr. Lauter) At the time the shooting started, what did the occupants of your car do?

A. I told them to duck.

Q. Did they duck?

A. Yes I say they ducked . . . after the first volley was over, the people pretty well cleared the street in front of headquarters and it quieted down after the first volley, and . . . just as I raised up there was a tear gas bomb dropped about six feet ahead of my car and right away I hollered at Mr. and Mrs. Wincek to roll them windows up . . . and attempted to start and get away from there and just as I done that the second volley came and the second time I told them to duck and stay ducked and I went down myself and we laid there until the second volley was over and I said to Mr. Wincek 'We have got to get out of here one way or another' so I raised up high enough that I could see out with my left eye, and I put my car in low gear and pulled up about eight feet, and I cut my wheels real short, and the third volley came and I didn't stop and I hit the car back of me and I back up the street all through the third volley and the third volley was over the minute I backed into the alley. I . . . went up the street in high speed . . . pretty near a block and I seen at least a dozen men standing around there . . . and I seen two men (Beckner and Hardesty) holding one man between them and somebody hollered 'Take this man to the hospital' . . . I stopped my car and I told my wife and Mr. and Mrs. Wincek to get out on the street in order that we would have room to take these men to the hospital. These two men were holding one man and we loaded this man in the back seat and one man . . . held this wounded man's head . . .

There was the man got on the front seat and he said he got shot in his right shoulder . . . While we were driving up to the hospital this man lying on the back seat was moaning and suffering terribly. He said 'Boys, I am dying.' I rushed the man up to the hospital at high speed. We put him on the stretcher up there and took them up on the second floor on the elevator. I helped lift the man on the bed and pulled his pants off . . . And I rushed down to my car and beat it right back to where I left my wife and Mr. and Mrs. Wincek. When I got there, my wife and Mr. and Mrs. Wincek were not there. There were some other men standing there at the corner. Mr. Joe Morton picked up a tear gas shell that landed right on the corner there and up along the street. I was standing there looking at that and Mr. Wincek hollered up the street and said 'Hey Walt! I am up here.' So I went in my car and drove on up the street and I picked up my wife and Mr. and Mrs. Wincek.

Q. Do you know that the man you took in your car, who was lying in your back seat, died?

A. Yes. I went up to C. I. O. headquarters . . . the next day and some of the boys . . . told me 'you know that fellow you took to the hospital . . . Well that fellow died this morning.'

Q. Will you describe the condition of your car after the shooting?

A. . . . The windshield was all shattered from being shot. I don't think there were any rifle shots or machine gun shots hit our car. It was practically all buckshot. It shattered . . . the body over the windshield and the body down along the sides of the windshield and both fenders. The left door window . . . was shattered . . . I counted ten shots that went through

the radiator that landed back of the motor up against the dashboard . . .

Q. During all of the time that you were there did you see any shots come from C. I. O. headquarters?

A. No sir; none whatsoever. I didn't see no flashes, and I didn't see no shots, and I didn't see anybody whatsoever have a gun.

Q. Did you see anybody shooting except the police?

A. No sir."

Harry Jones testified that after the shooting began, "I laid down between the seat and the gear shift and the brake for maybe a minute or so, until I worked my body up onto the seat and kept my head down . . . I opened the door and got around on the rear bumper . . . While standing on the bumper, the gas shells and shots started flying and tears started rolling down my cheeks and I started feeling a little sick in my stomach. I got a foot braced and I made a leap. I ran from door to door until I got to the last building."

"Q. (By Mr. Lauter) Will you describe the condition of your car?

A. There was a bullet hole through the windshield and a lot of buckshot in the windshield, a bullet hole through the right headlight, and the radiator on the inside was all full of holes and the outside where the buckshot hit is dinged and the hood on the left side is all spotted from where the buckshot hit and knocked the paint off."

All the foregoing witnesses have described the tactics of the police as they saw them from outside C. I. O. headquarters. John Veto, retreating from the door into the building, describes a scene of unparalleled horror. He testified that as the two police officers advanced up Cleve-

land Avenue and said "Let's bust them up, boys" they dropped flat. "Then a shot came by just where I was standing, right on from there near me, and I think there was a tear gas shell, because it hit the building and some pieces came inside the room there. As soon as when I heard that I turned around and went into the hall. And there was a table right there in the hall. When I was turning to dive under the table I had a sharp feeling right on my leg here. And I laid flat under the table. And I didn't get up to see what it was because if I went from there I could get hit on the head."

"Q. (by Mr. Lauter) You had been shot?

A. Yes . . . I was (under) the table laying flat for ten minutes . . . I heard a man from the outside say 'God! They're not blanks; they're bullets.' . . . Then when I heard that I crawled from the table and I went to the other room. And that room leads into the kitchen. And I went into the kitchen. And there five women and around seven or eight men . . . We waited there for a little bit and we shut the windows all around us . . . There was so much tear gas and the women were all choked up . . . We waited a little bit in the kitchen there for about 15 or 20 minutes, I guess, and a man said 'I will go out and see what happened.'

Q. Why did he say that? Was the shooting still going on?

A. Yes. And I said 'All right. I will go with you.' He was going on from there and I was coming on back. And when he reached the door—

Q. What door?

A. The front door . . . that leads to the street. When he opened the door I saw a deputy sheriff shot at him right away while he was holding the knob of the door and the door was half opened and the deputy sheriff turned around and shot the guy right in the

leg. He said 'God! I am hit.' When I heard that 'God, I am hit' I said 'Come on boys let's help these men out.' And two more men came and we helped him . . .

* * * * * *

And we carried the man into the kitchen and we laid him on the icebox . . . a low icebox . . . a woman went to get hot water to clean him. And by the time she came, the kitchen was all full of blood. There was blood all over the kitchen there coming from his leg . . . Then the woman washed him up and we let him go for a little bit. We heard a noise in there and we turned off the lights awhile, but the man he fell from the icebox on to the floor. And then we picked him up again. By the time we picked him up two women went to the door . . . to call for the ambulance. When they got to the door they were shot at twice, because when (they) came back they said 'Gosh, we have been shot at twice.' From that time on nobody went to the door anymore. We all sat behind there in the kitchen . . . Then the ambulance came . . . and we helped the men to carry him out on the stretcher. When we carried him out, I said to the women there 'You women might as well get out from there.' Well, they got out. One of them, she crawled from the window . . . then the other one went out the front of the house.

Q. When did they go out the front room?

A. When the ambulance was there because that was the chance they had. Otherwise they would be shot and they couldn't get out.

Q. What did you do?

A. I helped the men put him in the ambulance and I went away too . . . I went on the sidewalk, and when I reached around 25 feet them police were hollering to 'Come back here! Come back here!' I turned around

and I saw them hollering and I stumbled on a man lying on the street there . . . And I got up and ran away. And I reached the corner of Cleveland and McKinley Avenue there, and there was a bunch of men, I would say ten or eight men. They were talking together about helping the man lying on the street there . . . When they were near the man, the police shot and they hit one of those men . . . Then finally I went up McKinley Avenue . . . And I saw a lot of police. They were coming from toward McKinley Avenue. And I saw that and I kept going. When I reached the corner of Duncan Street and McKinley Avenue, there was . . . a car of special police and a bunch of men sitting on the ground. They were talking together. When that passed, they shot at those men. I ducked down behind a telephone post there.

Mr. Donald Wakefield Smith: How far was that from C. I. O. headquarters?

A. It was three blocks away from C. I. O. headquarters.

Q. (by Mr. Lauter) Now during all the time you were there, did you see any shooting from C. I. O. headquarters?

A. No.

Q. Did you see any shooting from anyone except the police?

A. Just the police shot."

Wilbert Coleman, the occupant of the second floor, testified for the respondent that the glass windows in the front of the building were smashed, that there were bullet holes inside the building, that tear gas was fired through the two front windows, and that because of the effects of the gas, his wife, his brother-in-law and mother then in his apartment, required treatment at the Republic Steel hospital.

To all of this testimony, the respondent replied with a plea, in effect, of self-defense, charging that the police opened fire only after several shots had been fired at the police from somewhere near the vicinity of C. I. O. headquarters.

Before examining the testimony of the witnesses for the respondent it is necessary to recapitulate the sequence of events immediately prior to the encounter as established up to this point:

(1) Shortly before 11 p. m. Harry Jones parked his car on the west side of Cleveland Avenue, almost directly across the street from C. I. O. headquarters, with its headlights shining on the regular and special police lined up on Cleveland Avenue 50 to 100 feet south of C. I. O. headquarters.

(2) Officer Fellabom armed with a loaded submachine gun was standing on the west side of Cleveland Avenue across the street from C. I. O. headquarters in the immediate vicinity of Jones' car.

(3) At approximately 11 p. m. Major Curley and Special Officer Henderson advanced midway from the line of police toward C. I. O. headquarters.

(4) At the same moment Officer Fellabom fired two or more shots at the headlights of Jones' car.

(5) Almost immediately thereafter the police opened fire at C. I. O. headquarters.

With this summary, we turn to the testimony of the witnesses for the respondent. It is evident that the vital question at issue is the exact source of the shots which the respondent alleges precipitated the shooting by the police. Officer Ickes testified, "Cap Curley lined seven or eight of us, maybe six or seven I don't know . . . us fellows that had

the gas guns, across the road . . . about 100 feet south of C. I. O. hall on Cleveland Avenue . . . He said he was going over and tell those people to move, that it was late enough, that he was going to have them move off the street . . . break them up . . . Just as he started over there about halfway between the C. I. O. headquarters up the line, there was *four or five shots came out along in the vicinity of the C. I. O. headquarters.* [37] Stones started to fly . . . We started firing. I don't remember whether—I started firing gas shells over against the front end of the building . . . Well, we started to fire the gas shells, and after we shoe some gas into them, they started to disappear somehow. There was still some across the street but not all of them. All of them didn't disappear but most of them did. They ran all over, I guess . . . A little while later, the Canton police arrived and they drove up through Cleveland Avenue with their armoured car and shot gas—what they needed to clear the street. That is all there was to it."

On cross-examination Ickes added that he saw Special Officer Henderson advance with Curley, that he did not see anyone use a machine gun, and that he heard no other shots fired from the direction of C. I. O. headquarters except the four or five at the beginning, as Curley and Henderson had reached the point halfway up Cleveland Avenue.

Officer Kraft testified that he was standing about 100 feet south of the brick building on the west side of Cleveland Avenue ten yards west of the sidewalk. " . . . they got pretty noisy up there and Curley said something about breaking them up . . . and Curley started up toward . . . the crowd . . . and when he got about 50 feet from the crowd, four or five shots rang out and stones flew, they started shooting from both sides."

"Q. (by Mr. Pontius) Now you saw four or five

37. Italics supplied.

shots fired. Where did they come from, did you observe?

A. *From the C. I. O. headquarters there some place.*[38]

Q. What if anything did you notice about any automobile coming up there on the street? . . .

A. Someone pulled up there with an automobile. He stopped there and turned the headlights on. He had the headlights on the police.

Q. Did that occur before Curley started up the street or after he started up the street?

A. Right about the same time.

Q. Did you hear any talk there with respect to those headlights?

A. I heard some one holler to turn them out. In front of the C. I. O. headquarters, he hollered to turn that light off."

Kraft on cross-examination testified with reference to the four or five shots as follows:

"Q. (by Mr. Lauter) Where did you see the bullets come from?

A. C. I. O. headquarters.

Q. What part of the headquarters?

A. The front part, close to the entrance some place . . . kind of a cement porch in front there.

* * * * * *

Q. Do you mean the sidewalk?

A. Yes sir.

Q. And that is where the shots came from?

A. Up in there some place.

Q. From the sidewalk is that right?

A. I can't swear where, right the exact spot where they come from, but they come from in there some place.

38. Italics supplied.

Q. I am trying to find out . . . whether you know where they came from or not.

A. I heard them in that direction right in front of the—

Q. Did you hear them or see them?

A. I heard them.

Q. Were you facing the C. I. O. headquarters?

A. I was.

* * * * * *

Q. You didn't see where they came from at all?

A. I didn't see them, I heard the direction they came from."

Kraft also testified that he saw Fellabom earlier in the evening take the submachine out of the police car, and walk across the street, but did not see him shoot at the headlights.

Officer Kelley was among the group of police stationed 100 feet south of C. I. O. headquarters. He testified that "an automobile was driven up and parked on the west side of the street; the driver got out of the car, left the lights burning. They were shining directly down the road and into our face and it was partially blinding us. Someone called for him to turn the lights out and the man had taken oh possibly three or four steps away from the car and he turned and went back and turned the lights off. And someone called out from the vicinity of C. I. O. headquarters, and he used a string of unprintable words and ordered this man to turn the lights back on and he immediately went back to the car and snapped the lights back on. Then with that Captain Curley started forward . . . to turn the lights off . . . and as he passed me, he told me to cover him . . . When he got up within oh approximately 15 feet of the automobile, why there was a volley of rocks thrown and some one fired *five shots from the revolver in the vicinity*

of the C. I. O. Hall.[39] The shots were fired in rapid succession. And with the shots and the stones, the crowd surged forward and I released the tear gas shell about eight or twelve feet over their head . . . "

On cross-examination, Kelley testified:

"Q. (by Mr. Lauter) You testified about covering Major Curley at one point . . . Will you state when that was?

* * * * * *

A. Well it was prior to the start of the fight up there, just a minute, or within a few seconds rather.

Q. Was that the time that the headlight was shot out?

A. Yes sir."

Kelley then retracted his previous statement that Curley had gone forward in order to turn off the headlights.

"Q. He (Curley) said nothing about the lights?

A. Not to me.

Q. When were the lights shut off? Was that before the general shooting started?

A. Yes sir.

Q. Fellabom shot the lights out of that car before the shooting occurred?

A. *No.* Let me recall about that. *That was before the fracas.*[39]

Q. Don't you know which statement is correct now?

A. The last one.

Q. The first statement was incorrect?

A. 'Yes, sir, I am sorry."

While this testimony confirms the testimony of witnesses for the Board with regard to the time at which Fellabom shot out the headlight we are satisfied from the manner in

39. Italics supplied.

which Kelley answered the questions put by counsel for the Board, and from his testimony on direct examination, that Kelley did not see the shots which were fired by Fellabom at the same moment that Kelley claimed to have heard the five shots fired in rapid succession from the vicinity of C. I. O. headquarters. If Kelley's testimony on this point is to be credited at all, it indicates that he merely saw the light from the headlight shut off.

It is evident from the testimony of these three officers that although they all appear to have been facing C. I. O. headquarters at a distance of approximately 100 feet when the four or five shots were fired, they could not fix the source of the shooting any more precisely than "out along in the vicinity of the C. I. O. headquarters," or "from the C. I. O. headquarters there some place" or "from the vicinity of the C. I. O. Hall." None of the three testified that they saw flashes or fire from a gun, and it appears from their further testimony that they merely heard the shots. Moreover, with the possible exception of Kelley, none of the three saw Fellabom, stationed directly across from C. I. O. headquarters, fire his submachine gun at the headlight of Jones' car at approximately the same moment that they claim to have heard the four or five shots from "out along in the vicinity of C. I. O. headquarters." Kelley's testimony, as noted above, merely indicates that he saw the light shut off, but not that he saw Fellabom fire his submachine gun. Although the testimony of these three witnesses establishes the fact that certain shots were fired, it does not indicate that they were fired by the strikers rather than by Fellabom.

We turn next to the testimony of several of the respondent's employees who claim to have seen the firing from C. I. O. headquarters.

Orin Pauli testified that at 11 o'clock he and two fellow employees, whose shift ended at that hour, drove up to the

respondent's main entrance or gatehouse, on their way out of the plant from work.[40] This entrance is located about 300 yards from C. I. O. headquarters. Pauli's car was fourth or fifth in line when the first car was stopped at the entrance by Republic Steel Police. "We drove up to the entrance, there they stopped us, they had started to shoot," he testified on direct examination "You could see the flash of the fire coming out . . . of C. I. O. Hall . . . I didn't see anything else, but we heard the bullets." On cross-examination, he stated that he was standing or "ducking" behind the car from the time the shooting started until after it was over, and again, that he was standing beside his car when he heard the first shot. Pauli also amplified his description of the shots by stating that he saw the flashing of guns from the front and side windows of C. I. O. headquarters when the shooting first started.

It will be noted that there are two important discrepancies between Pauli's testimony on direct examination and his testimony on cross-examination. If he drove up to the entrance in his automobile and the shooting had already started, as he testified on direct examination, he could not have seen the first shots and could not have been standing behind or beside his automobile, as he testified on cross-examination. On cross-examination, confronted with this conflict, Pauli finally chose to reaffirm his second version.

In any event we consider his testimony unreliable. Standing approximately 300 yards away, behind four or five other cars, in the darkness of 11 o'clock at night, he claimed to have seen flashes from the front and side windows of C. I. O. headquarters, which not even the closest observer of all

40. In his testimony on direct examination Pauli referred to Gate No. 1. A glance at the map (Respondent's Exhibit No. 1) will show that it would be almost impossible for anyone at the No. 1 gatehouse to observe the front of C. I. O. headquarters. On redirect examination, Pauli corrected his previous testimony and stated that he meant to refer to Gate No. 2, the main entrance.

the witnesses for the respondent claimed to have seen. It is obvious that even if he did see flashes from guns, he could not at that distance have distinguished whether they came from Fellabom's machine gun or from C. I. O. headquarters.

Edward Lustig, a watchman employed by the respondent, testified that at approximately 11 o'clock he was standing at the window on the north east corner of the respondent's main office building, about 400 feet from C. I. O. headquarters. "There was a man walked up the street toward the C. I. O. and he got part ways up there and I hear some noise and hollering and all at once why there was five shots fired from C. I. O. and this somebody hollered in the back for . . . somebody to come forward and they started to shoot this tear gas."

> "Q. (by Mr. Pontius) Just tell us from where you saw the shots fired as you observed them.
>
> A. Well right from the C. I. O. building, right from the sidewalk down—there was a man standing as close as I could see from the distance I was away from him, and he fired five straight shots."

It will be noted that Lustig is the first witness for the respondent who claims to have seen any person firing the shots. All other witnesses observed only the flashes or the fire from the gun. On cross-examination, Lustig defined the man's position more closely. "It looked to me just like he was standing on the sidewalk when he fired this gun . . . just about eight or ten feet from the building . . . five shots in rapid succession."

In view of this testimony, more precise, with regard to the position of the person who fired, than that of any other witness, the following testimony on cross-examination is significant:

> "Q. (by Mr. Lauter) Is your eyesight pretty

good, Mr. Lustig, now?

* * * * * *

A. Pretty fair.

* * * * * *

Q. Can you see what time it is over there now (referring to the clock in the hearing room)?

A. Yes.

Q. What time is it?

A. I think it is 20 minutes after 4.

Mr. Lauter: Let the record show—

The witness: Or three.

Mr. Lauter—that it is twenty-five minutes after three.

The witness: After three, is it?"

Lustig also admitted that he was "kind of a little deaf, that is my ears" and had considerable difficulty in hearing the questions addressed to him at the hearing. We consider that these admissions render Lustig's testimony unreliable. If, as appears, his eyesight was poor and he was hard of hearing, we doubt that at a distance of 400 feet at 11 o'clock at night he heard someone holler to come forward and saw what no other witness in the immediate vicinity was able to observe—a man standing on the sidewalk eight or ten feet from the C. I. O. headquarters fire five straight shots. At the very least, we believe that under these circumstances Lustig could not have distinguished whether the person firing the five shots in rapid succession was Fellabom with his machine gun across the street from C. I. O. headquarters or some other person among the strikers in front of C. I. O. headquarters.

Frank Swarm, night watchman employed by the respondent, was standing at the window on the east end of the first floor of the district or main offices, at least 300 feet from C. I. O. headquarters. A few seconds after the 11 o'clock whistle had blown, he testified, he saw the fire

from guns, from in front of C. I. O. headquarters, "five shots from the front of headquarters."

"Q. (by Mr. Pontius) Then what next did you see?

A. Well really leading up to the shooting, there was two men walked up Cleveland Avenue, in front of the headquarters, and they got right up near the headquarters and there was five shots fired. Two men dropped and they started back towards the police department they had strung across Cleveland Avenue. After the fifth shot was fired, the Massillon city police started to shoot tear gas."

After the Canton police arrived, Swarm continued, "there was another volley of firing; shooting started from up in front of the hall again."

On cross-examination, he testified with respect to the first volley of shots:

"Q. (by Mr. Lauter) Where did the shots come from?

A. In front of the C. I. O. headquarters . . . directly in front of the building . . .

Q. But you don't know whether it was from the doorway or the sidewalk?

A. I wouldn't be positive, no . . .

Q. But are you sure they didn't come from the steps of the building?

A. No, it wasn't that close."

With respect to the second volley of shots, he testified:

"Q. (by Mr. Lauter) Where did these shots come from?

A. From headquarters all around headquarters . . . right up in front . . . right in front of headquarters.

Q. In the doorway?

A. I couldn't say if it came from the doorway or not.

Q. Would you say it came from the sidewalk?

A. Either the sidewalk or the street."

Officer Ickes and Major Curley testified that the only shots during the entire evening that came from the vicinity of C. I. O. headquarters were the four or five shots at the very beginning, immediately preceding the firing of gas bombs by the police. Officer Johnson, who arrived at Cleveland Avenue shortly after the shooting had begun, testified that he saw no shots fired from C. I. O. headquarters at any time after 11 o'clock. Officer Fellabom testified that the only shooting from C. I. O. headquarters that he saw came from the doorway at 11 o'clock, and that, thereafter, from his position directly across the street from C. I. O. headquarters, he fired several rounds at the upstairs windows of other houses. This testimony by the respondent's witnesses indicates that the second volley came not from C. I. O. headquarters but from Fellabom's submachine gun. As noted above, however, Swarm identified both volleys as having been fired from in front of C. I. O. headquarters. We think it clear that Swarm, standing at the east end of the main office building, was not in a position to distinguish whether the first volley came from Fellabom or from C. I. O. headquarters. The very fact, however, that Swarm identified both volleys as having been fired from the same spot indicates that the first volley, like the second, was fired from Fellabom's submachine gun.

The testimony of two other witnesses for the respondent lends support to this conclusion. Wilbert Coleman, the occupant of the rooms over the C. I. O. headquarters, testified that he heard the shooting but did not hear any shots come from the downstairs of the building. James Adams, a visitor at Coleman's apartment, testified that he saw a man on the west side of Cleveland Avenue on the

sidewalk shooting a machine gun, that the first shots that were fired sounded as if they came from the west, from the street, directly in front of the building.

There remains to consider the testimony of Major Curley and Officer Fellabom who at relatively close range claim to have seen the flashes of the gun as it was fired. Of all the witnesses for the respondent, Fellabom tells the most circumstantial story of the events which followed. At many important points, however, his testimony differs from that of other witnesses both for the Board and for the respondent. He testified that immediately after the intoxicated man with a white shirt and a straw hat gave up his attempt to go through the police line, Curley walked up to the center of the street and shouted to C. I. O. headquarters, " 'A couple of you men take this man out of here before he starts to make trouble.' [41] I noticed this man walked to the doorway in the C. I. O. headquarters while Curley was standing there. Stones started to fly. I saw the fire flying off the bricks there. I saw one of these hand grenades—a gas bomb—I seen them flying off the stones. That gas bomb didn't any more hit the road when the shooting started out of the doorway."

"Q. (by Mr. Pontius) Now from your position could you see any guns from there?

A. I could see the flashes of the shooting. I couldn't see the guns . . . the fire was flying close from the top of the door. Just like someone was standing up and holding a gun and shooting down like that (indicating) I could see this much . . . just like someone was standing in the doorway and a gun held like that (indicating). I could see that much on the truck.

41. According to Curley and Ickes, this incident occurred at approximately 10:30 p. m.

Trial Examiner Lindsay: You mean the gun was held up over his head?

A. Yes it was higher.

Trial Examiner Lindsay: Holding the gun up in the air. The shooting was down?

A. Yes.

Q. (by Mr. Pontius) With respect to this truck, where was the location of this firing?

A. It was right behind the truck.

Q. That is from where you stood?

A. Yes, sir.

Q. Now, could you tell the direction in which these shots were fired?

A. They was coming toward our men. They were standing at an angle.

Q. From the position you were standing in at that time, could you see any part of the doorway, leading into the C. I. O. headquarters?

A. About two feet of it top and down.

Q. Now where in respect to the doorway did you see these flashes?

A. Close to the top.

Q. Were you able to distinguish any person there?

A. No, sir. It was a tarpaulin over this truck. It hid the view of the front. But I could see—all I could see was about two feet around in top of the road.

Q. Could you see the man holding his hand up there . . .

A. All I could see was this firing this fire was flying close to the top of the door.

Q. Now what if anything did you do at that time?

A. I turned the machine gun loose on that shoot-

ing out of the door . . . I shot over in there and then stopped, and then the boys—the rest of them was all shooting in there, shooting gas. They was close to me and it got so noisy you couldn't hear yourself think."

Fellabom then described how he shot out one headlight of Harry Jones' car and explicitly testified that he did this just before the above described events took place. Continuing, he testified that he first fired three times at the doorway, then "saw in the upstairs windows was flashes of shooting."

"Q. By upstairs windows, you mean what?

A. Toward the buildings along the street on the right hand side, on the east side of the road. . ."

On cross-examination, Fellabom stated that he was on the west side of the street across from C. I. O. headquarters, that "the first shot came out of the doorway of C. I. O. headquarters," and that he fired the second shot. As noted above, he then retracted his explicit testimony made on direct examination, that he had shot at the headlight just before shooting at the doorway, and asserted that he had waited approximately 35 minutes before shooting the headlight out. He remained firm in his assertion that there was no shooting other than the gas bomb before the shots came out of C. I. O. headquarters.

"Q. (by Mr. Lauter) You are absolutely sure that some police officer fired a gas bomb before any shooting from the C. I. O. headquarters.

A. Yes, sir. I saw it flying through the air. That is as true as I said it . . .

Q. I am asking you whether or not before the gas bomb was fired, the only action of any violent nature was the throwing of stones by some C. I. O. men, is that correct?

A. Yes, sir."

Fellabom also testified that the only shooting that he saw came from the doorway, at approximately 11 o'clock. Later he testified that he saw between 50 and 100 shots coming from the upstairs windows of the eight or ten buildings on the east side of Cleveland Avenue, and that he fired his machine gun several times at these windows. As noted above, Officer Ickes and Major Curley testified for the respondent that the only shots which they heard or saw from the vicinity of C. I. O. headquarters during the entire evening were the four or five shots *immediately preceding the firing of gas bombs by the police.* Thus Fellabom whose view of the front of C. I. O. headquarters was almost totally obstructed by the tarpaulin-covered truck, claims to have seen flashes or a first shot fired, from the doorway after a gas bomb was fired, at a time when Ickes and Curley with an unobstructed view testified that all firing had ceased from the vicinity of C. I. O. headquarters. In addition, no witness, except Fellabom, testified that any shots were fired from the doorway. Fellabom's testimony on this point is not only at variance with the testimony of the witnesses for the Board, who testified that no shots were fired from the doorway or any other place in the immediate vicinity of C. I. O. headquarters, but also with the testimony of all the witnesses for the respondent who testified to the first shots. We think the evidence is overwhelming that Fellabom's testimony to the effect that he saw flashes or a first shot from the top two feet of the doorway is not to be credited.

The salient part of Fellabom's testimony, however, relates to his consistent assertion that he saw a gas bomb fired by the police fly through the air and hit the road *before* he saw the "first shot" from the top two feet of the doorway of C. I. O. headquarters. Every other witness for the respondent, without exception, steadfastly asserted that the police fired gas bombs only *after* four or five shots were

fired from some place, more or less definitely identified, in the vicinity of C. I. O. headquarters. This difference between the testimony of Fellabom and every other witness for the respondent is crucial. It indicates the police 100 feet south of C. I. O. headquarters opened fire after hearing the shots fired by Fellabom from his submachine gun in the belief that such shots were fired by the strikers.

Before summarizing the evidence in support of this conclusion, we turn to the testimony of Major Curley.

Curley testified that he was standing 100 feet south of C. I. O. headquarters among a group of special and regular police at 11 o'clock when "the crowd commenced to get larger at C. I. O. Hall and Kelley and Henderson and Fellabom and Ickes and I got our heads together and I said 'Don't you think it would be a pretty good idea to go up and tell those fellows that they will have to abide by the proclamation that was handed down by the Sheriff of Stark County.' . . . So I said 'We do not want to have any trouble here.' I said 'It would be a good idea to break it up.' So Henderson, he started forward, and he turned around and he said 'Come on Cap' and I said 'Hell, I ain't got any business up there. I am not deputized to go up in there.' And he said 'You are deputized now.' He says 'You are going right along up.' I says 'All right, if that is the way you feel about it, I will go up and try to talk to the boys.' So we started forward . . . and I got about 50 feet ahead of where the officers were lined up . . . I was met with 'You God damn dirty sons of bitches' and bingo out came a bunch of rocks, clubs, stones and bingo five shots one right past my head."

"Q. (by Mr. Day) Who said this about the sons of bitches?

A. The men up around the C. I. O. Hall.

Q. And where did the rocks come from?

A. Around the C. I. O. Hall.

Q. Where did the shots come from?

A. From on the step of the—in front of the front door of the C. I. O. Hall.

Q. How many shots did you see?

A. Five.

Q. Could you give an opinion as to what kind of shots they were, or from what guns they were fired?

A. Yes, an automatic revolver . . . I immediately dropped to the ground and all hell broke loose . . . the firing started, I was lying on the ground. I don't know, I laid down. The firing then started from both sides and tear gas guns were going. Fellabom was back with a machine gun loaded with bird shot. He started that barking. The gas—that was fired for effect only."

We have already referred to Curley's testimony that Fellabom shot out the headlight of Jones' car, fifteen minutes after the shooting had begun, and found that the overwhelming weight of evidence was to the effect that the shooting occurred at the same moment that Curley and Henderson had reached the half way point in their advance toward C. I. O. headquarters. It will be noted that in the testimony cited above, Curley stated that Fellabom was among the special police 100 feet south of C. I. O. headquarters, at the time Curley began his advance. On cross-examination Curley modified this statement and testified that Fellabom was on the west side, on "the first tile building on Cleveland Avenue." Other evidence in the record indicates that this tile building is almost directly across the street from C. I. O. headquarters. It is therefore, clear that Fellabom was approximately 50 feet to the north west of Curley at the moment the five shots were allegedly fired from C. I. O. headquarters. With respect to these shots, Curley further testified:

"Q. (by Mr. Lauter) During the entire evening of July 11th, do you know how many shots were fired?

A. Five.

Q. How many shots did you see coming out?

A. Five out of the steps.

Q. Did you see some shots other than those five that night?

A. I didn't.

Q. Then a total number of shots you saw coming out of the C. I. O. headquarters was five?

A. That is right."

Upon the reliability of Curley's testimony that five shots were fired from in front of the front door of C. I. O. headquarters depends in large measure the respondent's plea of self defense. Of all the witnesses for the respondent he was the one nearest to C. I. O. headquarters, with a totally unobstructed view of the entrance and the crowd, and had the best opportunity to observe the acts of the strikers. We believe, however, that Curley's testimony on this decisive point is completely unreliable.

As one who purported to act as a public spirited citizen, he had exhibited an active bias in favor of the respondent. As one who in the absence of Chief Switter had assumed command of the police department and with such command the responsibility for the acts of the regular and special police, he had a paramount interest in asserting that the strikers rather than the police were legally and morally liable for an encounter which resulted in the death of three strikers. This paramount interest and active bias run through his entire testimony.

We have already found that Curley's testimony with respect to the selection and bonding of the respondent's employees as special police is not to be credited. Similarly, Curley's testimony that he did not issue the orders

which raised the guard at C. I. O. headquarters is flatly contradicted by the testimony of Chief Switter, Officer Kraft and Officer Fellabom, and is not to be credited.

Curley further testified that just before advancing toward C. I. O. headquarters, he was deputized, for the first time, by Special Officer Henderson, in the presence of Officers Kelley and Ickes. Kelley, however, testified that at this time Curley said nothing except that he was going forward. Ickes testified that Curley said nothing, as he began to advance, except that he was going to "break them up." Officer Kraft testified that he was in the line of police at this time and heard Curley say that he was going to break them up. Kraft did not mention any conversation between Henderson and Curley. Henderson was not called as a witness. Under these circumstances, in view of Curley's evident desire to give the color of legality to his actions, we consider his statement that he was deputized by Henderson to be a protective afterthought rather than a statement of fact. We believe that Curley's testimony on this point is not to be credited.

Finally, Curley testified that Fellabom shot out the headlight of Jones' car at 11:15 p. m. after the shooting elsewhere had begun. This testimony was flatly contradicted by a number of witnesses both for the Board and for the respondent. Under the circumstances described above, we found that Curley's testimony on this decisive point was not to be credited.

In view of the complete unreliability of Curley's testimony on such major points, and his obvious bias and interest, we feel justified in refusing to credit his testimony with regard to the source of the five shots.

A number of other witnesses for the respondent testified that they heard shots fired, either at the beginning of the encounter, or during it, but none of these witnesses was

able to fix the source of the shooting more precisely than "Cleveland Avenue," or "on the other side of the viaduct" or generally in the location of Cleveland and Oberlin Avenues. Some testified on direct examination to a number of shots coming from the crowd and on cross-examination admitted that they had not seen the shooting and did not know whether the police or other persons had fired the shots. A second group of witnesses testified that they saw flashes from cornfields, railroad tracks, and other places at some distance from C. I. O. headquarters. Both groups testified that they heard the shots come from all directions or from north to south or from the west to the east. It is obvious that such testimony proves little or nothing, except that there was a great deal of shooting taking place in and around the vicinity of C. I. O. headquarters from the time the encounter started until 11:30 or later. At least 20 police and an undetermined number of deputy sheriffs were engaged in shooting tear gas, guns, revolvers, and a machine gun in all directions on Cleveland Avenue. Other police east of Cleveland Avenue near the viaduct had shot revolvers and riot guns shortly before 11 p. m. The testimony of these witnesses, while indicating the wide extent of the shooting, proves nothing as to its source.

With this description of the incident at C. I. O. headquarters we turn to a concluding analysis and summary of the evidence.

For at least three quarters of an hour prior to the encounter, while an unarmed peaceful group of strikers and strike sympathizers were gathered at C. I. O. headquarters, engaging in their usual Sunday night pursuits of talking, changing pickets, playing music and dancing, 20 regular and special police, armed with revolvers, rifles, gas equipment and a submachine gun, were lined up on Cleveland Avenue under instructions from Major Curley to expect

trouble. We have analyzed and found without merit Curley's justification for his orders increasing and arming the police, and have examined and rejected the contention by the police that the crowd as a whole was other than peaceful. Even if we should credit in full the testimony of those officers who claimed to have heard threats against the police by one or two men in the crowd, it is apparent that under the circumstances described such threats were not taken seriously and that the strikers cannot be held responsible for the isolated utterances of one or two unidentified drunken persons who disappeared from the vicinity approximately half an hour before any violence occurred.

Shortly before 11 p. m., when Curley and Henderson, advancing up Cleveland Avenue from the line of police 100 feet south of C. I. O. headquarters, had reached a point midway between the police line and the strikers, Fellabom, standing on the west side of Cleveland Avenue, across from C. I. O. headquarters, fired several shots at the headlight of Harry Jones' car. Upon this point, as we have seen, the testimony is in conflict. We think, however, that the testimony of the witnesses for the Board, corroborated by the testimony of Officers Kraft and Kelley, far outweighs the testimony of Curley, which is unsupported except for the self-contradictory testimony of Fellabom.

Immediately after Fellabom fired his submachine gun, the police opened fire on the strikers. Because of the darkness and the rapid succession of events, no one witness was able to observe more than a segment of this incident and what immediately followed. The whole, therefore, can be understood only by a synthesis of the pertinent testimony of a number of witnesses.

Beckner, standing on the steps of C. I. O. headquarters

looking south, saw the shooting begin from a point in the immediate vicinity of Harry Jones' car, parked on the west side of Cleveland Avenue, across from C. I. O. headquarters, just at the moment that Henderson and Curley were approximately midway between the police and the crowd at headquarters. Beckner, however, did not see Fellabom fire at the headlight. Walter Meyer, whose car was parked directly across from C. I. O. headquarters, behind and slightly north of Harry Jones' car, heard Fellabom fire two shots at the headlights of Jones' car, but did not see Henderson and Curley. Adams, who was in Coleman's apartment on the floor above C. I. O. headquarters, heard the first shots fired from the west side of the street, in front of C. I. O. headquarters, approximately where Fellabom was standing. Swarm on the first floor of the respondent's district office building, saw a first and second volley of shots fired in front of C. I. O. headquarters. As noted above, Fellabom fired a second volley from his position on the west side of Cleveland Avenue across the street from C. I. O. headquarters, after all the alleged firing from C. I. O. headquarters had ceased. Swarm's testimony, therefore, indicates that the first volley, like the second, was fired by Fellabom.

Officers Ickes, Kelley, and Kraft, standing in the line of police 100 feet south of C. I. O. headquarters and facing it, heard four or five shots in rapid succession from "out along in the vicinity of C. I. O. headquarters," but did not see the shots and did not see Fellabom fire his submachine gun. They testify that immediately after hearing the four or five shots, they fired gas projectiles from their gas guns. Swarm testified that after the fifth shot was fired, the police started to shoot tear gas. Fellabom, however, asserted that the police fired gas bombs at the strikers before a first shot was fired from C. I. O. headquarters. Assuming that with relation to the sequence of the four or

five shots and the gas bombs, these witnesses are telling the truth, the discrepancy between the testimony of Swarm and the officers south of C. I. O. headquarters and that of Fellabom across the street from the crowd, can only be explained by the fact that Fellabom first fired his submachine gun at the headlights of Harry Jones' car, that Ickes, Kelley, and Kraft and other police officers, hearing these shots in the vicinity of C. I. O. headquarters, fired their gas guns and other guns at the crowd, and that Fellabom, seeing the gas bombs flying through the air, opened fire with his submachine gun. Thus, all those present, except Fellabom, heard Fellabom's shots as shots from the strikers and Fellabom seeing the police open fire, continued to shoot his submachine gun. We regard Fellabom's contradictory testimony on this point as an attempt to confuse the issue and thereby avoid responsibility for the incident which touched off the encounter.

In view of the fact that witnesses to a sudden shooting are notoriously inaccurate as to certain details, we regard the discrepancy between the number of shots reported by Meyer and those reported by the witness for the respondent as unimportant. Several witnesses for the respondent testified that the shots were fired in rapid succession, thus indicating the probability that the shots came from a machine gun and that any estimate of the number of shots is at best an approximation. Jones' testimony that there was a bullet hole in his right headlight and another through his windshield, while lending support to Meyer's version of two shots, is inconclusive, since there were a number of other holes in the radiator of Jones' car, and it is obviously impossible to know whether every shot fired from Fellabom's machine gun registered on Jones' car.

Fellabom's testimony that he used only birdshot in the submachine gun is contradicted by the testimony that

there was a bullet hole in the right headlight of Jones' car, which Fellabom admitted having shot out with his submachine gun. Moreover, although Curley would not state what ammunition Fellabom used that night, he testified that the usual equipment for the machine gun was three magazines of regular 45 bullets and three of 45 birdshot.

In sum, the testimony of these witnesses with regard to the source, time, and nature of the first shots which provoked the shooting by the police indicates that they were fired by Fellabom standing across the street from C. I. O. headquarters.

Four witnesses for the respondent, however, claim to have seen flashes of shooting or shots from an unidentified person at some other point. With regard to the same four or five shots—and these are the only shots alleged to have been fired from C. I. O. headquarters—Curley claimed to have seen five shots fired from in front of the front steps of C. I. O. headquarters; Pauli claimed to have seen the flashing of guns from the front and side windows of C. I. O. headquarters; Fellabom claimed to have seen a first shot or flashes from a gun fired from the top two feet of the doorway of C. I. O. headquarters; and Lustig claimed to have seen five shots fired by a man standing on the sidewalk eight or ten feet from the building. For reasons already indicated, we believe their testimony is either false or incredible. As against these contradictory assertions, three witnesses for the Board—Beckner, Hardesty, and Veto—who were standing in or near the doorway of C. I. O. headquarters at the time in question, denied that any shots were fired by the strikers from the doorway or any other place in the vicinity of C. I. O. headquarters; and Wilbert Coleman, the occupant of the second floor, testified that he heard no shots from downstairs in the building. We regard it as significant, although not conclusive, that up to the very moment of the encounter, no witness claimed to

have seen any person in the crowd of strikers with any weapon, and that after the encounter, the police found no weapons, except Jones' pocket knife, on the person or in the possession of the 165 men arrested.

From the whole record, we find that the police, armed and forwarned by Curley to expect trouble, and made restless by the sound of shooting from the viaduct, opened fire at C. I. O. headquarters immediately after Fellabom fired his submachine gun; that the shots which the police heard and attributed to the strikers were in fact the shots fired by Fellabom; and that no shots were fired by the strikers.

We turn now for a moment to the respondent's contention that the strikers had assembled at C. I. O. headquarters with a preconceived plan to rush the police, enter the mill, and remove the employees who had returned to work. This contention rests largely upon the testimony of Officers Moore and Kraft.

Moore testified that at about 4 p. m. on July 10, while he was on duty with Officer Kraft, and Special Officers Hodge and Henderson, one Mike Rudak emerged from C. I. O. headquarters, approached the car in which the officers were sitting and said, "You officers had better watch, they are coming down and get you. I am a friend of the police." Moore stated that Rudak then walked back to C. I. O. headquarters, spoke to several fellows, and was shoved out into the street, from which Moore picked him up and took him to jail. "You could tell from the way he talked," Moore added, "that he had had a few drinks." Thereafter Moore told the other officers, "You had better watch out a little bit."

Officer Kraft testified that between 6 and 6:30 p. m. on July 11 while he was on duty with Special Officers Henderson and Kriger, a man called "Humpy" walked out of C. I. O. headquarters, approached the post where the

officers were stationed and said, "You better get out . . . big trouble tonight, 11 o'clock. Between 500 and 1000 coming down. They will kill all of the police and go into the mill and get the slabs." "He couldn't say 'scabs,'" Kraft testified. "He said 'slabs.' That is all he said to us fellows. He turned around and went back up to C. I. O. headquarters." Kraft also stated that "Humpy" had had a couple of drinks. Kraft further testified that when he reported this incident to Curley, Curley said he would send more men to that post.

Both of these stories are apparently versions of the same incident. We regard them both, if true, as without significance. Apart from the differences in the specific language attributed to Rudak or "Humpy" and the discrepancy in the date and the time of day on which the statements are alleged to have been made, it should be noted that Curley's testimony contains no reference to any such warning as that reported by Kraft, but was limited specifically to rumors which he had received as a result of the meeting of the strikers at Oak Knoll Park, that afternoon. Furthermore, Switter testified that before he left Massillon at 9:30 p. m. on July 11, he had heard no rumors of any kind with regard to any threatened activities by the strikers. If Mike Rudak was arrested on July 10, it is clear that Switter would have been informed of his alleged threats, had they been regarded as sufficiently serious to warrant action; and similarly if "Humpy" had informed three officers between 6 and 6:30 p. m. on July 11 of a plot to kill the police, it is reasonable to suppose that Switter, who at that time was still in charge of the police department, would have been notified or that Curley would have mentioned it in his testimony. Moreover, there is no evidence that any of the regular or special police, except the six regularly assigned there, reported to C. I. O. headquarters that night upon

their own initiative as a result of these or any other rumors. As noted above, they were all instructed to report there by Curley; and it is clear that these threats were not the basis for Curley's orders.

Switter testified that upon his return to Massillon Curley had stated that he raised the guard at C. I. O. headquarters "because he got rumors from a source he did not want to disclose that the pickets were going to crash the line and stop them from going into the mill at the 11 o'clock shift." At the hearing on July 21, 1937, Switter testified that Curley had not yet told him the source of the rumors which caused him to raise the guard. Since Curley testified to no rumors except those which he had received from the Oak Knoll Park meeting, and Switter had heard no rumors at all, we are inclined to believe that this statement to Switter was merely Curley's *ad hoc* explanation to justify the results which followed his countermanding of Switter's orders.

Officer Moore testified that on July 10, one Burke, a former captain of the picket post, in a conversation with Moore and Special Officer Hodge had stated, "They will know who is running this God damn show in 48 hours." Wilbert Coleman, an employee of the respondent, who occupied the second floor of the house in which the Union had established its headquarters, testified that at about 7:15 p. m. on July 11, he saw men whom he could not identify picking in the ground with flashlights and a stick and carrying stones toward the front of the building. Robert Adams, a plasterer, whose son was employed by the respondent, testified that between 6 and 7 p. m. on July 11, he overheard a "red-headed American" tell Mark Turkey, a member of the union, "'You keep your men out and we'll keep ours out.' . . . I heard Mr. Turkey said 'Well, I will never be out.' He said 'You get yours out.' He said 'We will get ours out.' . . . this American

fellow said 'I feel sorry for the colored fellow, but the damn niggers have got it coming to them. If they get killed they will just have to take it'." He testified that shortly after the first shooting was over "a car came up around the corner and stopped and they got out and my neighbor hollered and asked 'What is going on down there?' One fellow says 'They are having hell down there.' He says 'Anybody hurt?' He says 'Yes, we killed two of them damned city cops.' He said 'How do you know.' He said 'We saw them fall.' So this other fellow got out of the car and he walked up to another fellow and says 'You fellows are from Canton. Aren't you?' He said 'Yes.' 'Well you had better get the hell out of here before they get up here' and another fellow . . . said 'Is that thing in the car?' He said 'Yes.' 'Well,' he says, 'You had better get it out of here because they are liable to break through up here at any time.' And the fellow in the car got out and he says 'Did you see Joe?' He said 'No.' 'Well,' he says, 'we ought to find Joe.' They did not call no last names and my daughter was asking me. I says . . . 'Who is that fellow got out of the machine.' She says 'Tony Dimando. That is the only one I know'."[42]

In the light of the events which took place before C. I. O. headquarters, these sensational but vague statements, anonymous rumors, and acts by unidentified persons, freely attributed to the strikers, carry no weight. In the first place, since Burke's statement, the incident described by Coleman, and the remarks of the "red headed American" were not reported to Curley, they cannot be considered as a basis for his orders. In the second place, it is undisputed that the crowd at C. I. O. headquarters made no attempt whatsoever to rush the police, enter the mill, and remove the employees who had returned to work. On the contrary, at the first shots, the strikers

42. Dimando was not further identified.

fled in panic. With 26 regular and special police already lined up across Cleveland Avenue, armed with every weapon in the possession of the police department, and an undetermined number of deputy sheriffs in the vicinity, ready at a moment's notice to drive up in cars loaded with tear gas, such an attempt by an unarmed crowd of 200 people, including women and children, would obviously have been suicidal. Not only was no such attempt ever made, but the president of the Massillon lodge and the vice president of the Canton lodge of the S. W. O. C., noting the ominous attitude of the police, were on the point of telling the crowd to go home, when the police opened fire. In the third place, no police were killed, wounded, or even injured, except by the fumes of their own tear gas. The strikers were the victims, not the aggressors, in an unprovoked attack.

After midnight, as soon as the Canton police in their armored car had cleared the streets of people in the vicinity of C. I. O. headquarters, a "mopping up" squad of special police and deputy sheriffs, led by foreman and special police officer William Henderson, broke into rooming houses near Cleveland Avenue occupied by members of the Union, arrested 165 men, and, with the assistance of the National Guard, hauled them to jail.

At 2 a. m. on the morning of July 12, John Angelo, a striker who lived on the second floor of a three story rooming house on McKinley Avenue, a block and a half from C. I. O. headquarters, was awakened by a noise which shook the house, "hollering and breaking doors in the building." Two deputy sheriffs entered his room, thrust guns against his chest, hit him with a black jack, and threw him into the hall. Other armed deputy sheriffs roved through the hallways, crying, "Now you rats we have got you," and routed out the other occupants of the house. Fifteen or 20 roomers, most of them bare-

foot and half clad, including one woman, were taken downstairs and lined up outside the building. Other men from neighboring rooming houses were searched and added to the lineup. Angelo testified that a Special Officer Henderson in the company of several other special police officers, then asked, "How many C. I. O.'s are here and lift up your hands." Half to three-quarters of an hour later, 10 or 12 of these men were loaded into a National Guard truck, taken to the Massillon City Jail and then to the Canton Jail, where they were photographed and fingerprinted. After 2 days in the Canton Jail, Angelo, with a number of other men, was returned to Massillon, where he signed a waiver of his right to sue the city of Massillon and was released. He testified that when the deputy sheriffs entered his room, they showed him no warrant of arrest.

Christ Conzas, a striker, who occupied another room in the same rooming house, from his window observed the police enter houses on McKinley Avenue and heard doors breaking in his building. A short time later, two officers with guns and a flashlight broke down the door of his room, searched the room, and ordered him downstairs. There, he recognized Bill Henderson, the foreman for whom he had worked in the mill, and entreated Henderson to release him. "You belong to the C. I. O.," said Henderson, "and you have to go down." Other men were taken out from other houses "some of them without shoes, some without clothes, some without dresses, some without shirts." Conzas with the others was taken in a National Guard truck to the Massillon Jail, where he remained until Tuesday, July 13, 1937. Conzas was shown no warrant of arrest by the officers who broke down the door to his room.

Mark Turkey, a member of the C. I. O., who lived with his wife and three children in a rooming house on Fourth

Street, about three and a half blocks from C. I. O. headquarters, was awakened by his wife at five minutes of three. Half dressed, he went to the kitchen, where several deputy sheriffs, armed with a revolver and a shotgun, who had broken open the house door, asked for his guns and ammunition. When Turkey replied that he had none, they pushed him upstairs ordered four men who occupied rooms there out of the building, tore up the beds and mattresses as they searched the rooms, broke into a trunk, where Turkey's son kept a stamp collection, and ordered Turkey downstairs to wait for his "bus." A few moments later Turkey and the four roomers were loaded into a National Guard truck and taken to jail, in Canton, where they were photographed and fingerprinted. Turkey remained in jail at Canton until 4 p. m. Wednesday, July 14, 1937, when he was removed to the Massillon jail and released after signing a waiver. Turkey testified that when the deputy sheriffs broke into his house, they asked him whether he was a member of the C. I. O. but did not show him any warrant of arrest.

A total of about 165 men, all of them apparently members of the Union, were thus arrested and placed in jail. Hardman, who returned to Massillon after the shooting and conducted their examination, testified that none of the 165 had been shown warrants, that all had been arrested at places other than the scene of the riot by special police officers, deputy sheriffs, and National Guardsmen, and that although most of the men had been released from jail by Thursday, about four were still held, at that time, four days after the shooting. He also testified that of the 165, only one (Harry Jones) was charged with carrying any kind of weapon.[43]

We come, finally, to the question of whether the respondent is responsible for the events we have described.

43. As stated above, Jones was carrying a pocket knife.

From a careful examination of the record, we think that the answer is plain. As early as June 9 Carl Myers, the respondent's Acting District Manager, had attempted to persuade Chief Switter to use violence against the strikers, "to take such action as the Chicago police did and put them where they belonged"; "they knew how to handle the situation if we did not." On that day Myers donated to the Massillon police department the gas and gas equipment which was used by the police against the strikers on July 11, for "any situation which might arise." On June 13, after the meeting at the Chamber of Commerce in which the members of the Law and Order League had praised the Monroe police for smashing the picket line at the respondent's plant at Monroe, Michigan, Carl Myers again urged the Massillon city officials to use violence against the strikers: "It was a funny thing that a little town like Monroe could build up a police department big enough to get their mill operating again and control the situation and it was damn funny we couldn't do anything." In a pamphlet issued by the respondent during the strike, entitled "*What the Editors are saying about the Republic Strike—Reprinted by Republic Steel Corporation,*" the respondent set its seal of approval upon the actions of "the Monroe police, and the American Legionnaires and voluntary police who aided them and stand with them.

> "They have performed a healthful public service and they deserve high commendation and support. . . . These men have used forceful methods, but no more forceful than necessity demanded. . . . They simply are undertaking to uphold American law, order, and individual liberties. . . ."

As described above, the respondent through Chief Accountant Angstadt and Superintendent Peppard, the members of the Law and Order League, and the Back-to-Work movement succeeded in exerting such pressure upon

the city officials that, against their better judgment, they finally agreed to accept Curley's assistance and swear in as special police officers at least 32 of the respondent's employees, including foreman Henderson. That these special police officers were not disposed to be neutral was a fact generally known in Massillon. Of the 66 candidates which Peppard, Angstadt and Becker had submitted to the city officials on the morning of July 9, 29 had signed the Back-to-Work petition, as had 19 of the 32 men chosen by Major Curley. With regard to the temper of the members of the Back-to-Work movement, the Reverend Hess, a witness for the respondent, testified, "From my most sober judgment I am positively of the opinion that if we had not had the police there on the night of the riot that we might have had not two men killed but maybe 50 or 100 or more killed. . . . My reason is this, contacts that I had had with men, the Back-to-Work men . . . that they were in no temper to stand any more. . . . I testify that it was my judgment, taking the balance of two factors in the situation, from all sides, that we would have been staggering for this whole country, if we had not had the police there."

The Reverend Hess was not aware that, at the time of the encounter, five of the respondent's employees, who had signed the Back-to-Work petition, who had been bonded by the respondent, and who had been warned by Curley to expect trouble were special police officers whom Curley had armed and stationed in the vicinity of C. I. O. headquarters. The respondent called none of these five as witnesses nor the three other employees who were special police officers present during the incident.

Apart from their connection with the Back-to-Work movement, the respondent's employees who were appointed as special police officers were obviously not impartial. It will be remembered that Hardman and Switter had reviewed the 66 names submitted by Peppard and

Angstadt and had rejected most of them as too excitable, and that General Marlin had waived any question as to the fitness of the respondent's employees for the police force by stating that it was no time for neutral men.

Thus, prior to the encounter, the respondent had armed the police force with its gas equipment, staffed it with a foreman and 31 other employees, many of whom belonged to a group bitterly opposed to the strike, and had urged violence against the strikers. In addition, the respondent had approved, if it had not actually connived at, the appointment of Major Curley whose activities we have already found were conducted in the interest of and on behalf of the respondent.

These acts of the respondent achieve their further real significance in the light of a hitherto undescribed event which occurred on July 11. John Veto testified that at 5 o'clock that afternoon, as he was returning to his home by way of Cleveland Avenue, near C. I. O. headquarters, he passed within three feet of two special police officers, seated on chairs with their backs to the mill, and heard one of them say, "We are going to clean them up tonight." Veto testified that the man who spoke turned around, "and I recognized him as Bill Henderson, a chipper foreman in the mill. . . . He said 'Where is your picket card' and I said 'I didn't have any because I am not on duty'." Veto also testified that the other special officer did not turn around and that he did not recognize him.

To rebut this testimony, the respondent's counsel asked Officer Kraft:

> "Q. (by Mr. Pontius) During that afternoon I will ask you whether Mr. Henderson said to you—that is, this special officer Mr. Henderson, about five o'clock in the afternoon said to you this, or this in substance: 'That we are going to clean them up tonight?'

A. He never said nothing like that to me."

Kraft, however, testified that on that afternoon there were three officers detailed to and present at this post: himself, and Special Officer Henderson and Kriger.[44] It will be remembered that Veto testified that he did not recognize Henderson's companion. It is obvious, therefore, that Kraft's denial that Henderson "never said nothing like that to me" does not preclude Henderson's having made the statement to Kriger. We regard it as material that the respondent called neither Henderson nor Kriger as a witness and made no showing as to the unavailability of either.

At 9:30 p. m., after Switter and Hardman had left Massillon, Curley countermanded Switter's orders, raised and armed the guard at C. I. O. headquarters, and directed Fellabom to a post across the street from the strikers, with instructions to use his submachine gun. At approximately 11 p. m. when Curley and Henderson took it upon themselves to induce the crowd of strikers to go home, for no other avowed reason except that there were too many of them, Fellabom, pursuant to Curley's authority, used his submachine gun and shot out the headlight of Jones' car. As noted above, these shots were the overt act which precipitated the shooting by the other police officers.

After shooting about 25 tear gas projectiles, Officer Moore sent Gray, one of the respondent's foremen, to the Union Drawn Steel Company for more gas. Between 11:15 and 11:30 p. m., Curley telephoned from the respondent's main office to the Union Drawn Steel Company for more gas, and dispatched a police cruiser which returned with at least 25 cartridges of tear gas. Of the gas thus donated by the respondent prior to and during the encounter, Cur-

44. Kriger, like Henderson, is an employee of the respondent for whose bond the respondent was billed.

ley, Ickes, Moore, and Kelley testified that they fired a total of 158 gas projectiles or bombs at the strikers during the evening and that other special and regular police threw or fired an undetermined number of gas bombs or projectiles. The fury of the attack upon the strikers, led by Curley and Henderson, is matched only by the thoroughness of the round up, led by Henderson, in which all persons within a radius of three or more blocks from C. I. O. headquarters were arrested without warrants and incarcerated for several days, for the crime, apparently, of belonging to the Union.

We are of the opinion, from an examination of all the facts, that if Curley had not seized the opportunity when Switter had left Massillon, to take command of the police force, to increase and arm the guard in front of C. I. O. headquarters, and to instruct the regular and special police to expect trouble, the attack upon the strikers would never have occurred. That Fellabom's shooting at the headlight touched off the attack, may have been a tragic accident; but it is clear that, if Curley had not issued his unauthorized orders, neither Fellabom nor 13 of the other police would even have been present at C. I. O. headquarters on the evening of July 11. The attack was led by Curley, the respondent's agent, and by Henderson, its foreman; at least eight of the respondent's employees as special police officers participated in the attack; all the gas and gas equipment for the attack was supplied by the respondent. The respondent had publicly approved the use of violence against strikers by the police of Chicago and Monroe and had urged the Chief of Police of Massillon to follow the example of the police of those cities. When Switter left Massillon, Henderson was overheard to say, "We are going to clean them up tonight." From the whole record we find that the respondent is responsible for the attack upon the strikers.

B. Canton

Of the respondent's plants in Canton, two are directly involved in this proceeding: The Canton Works (Central Alloy District) which employes between 5,000 and 6,000 employees; and a tin plate mill, employing approximately 650 employees, which the respondent acquired on July 1, 1936, from the Canton Tin Plate Corporation.

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1. *The Plan of Employee Representation—(Central Alloy District)—Canton Works*

The Plan of Employee Representation was introduced at the Canton Works in June 1933 and, with minor amendments made in 1934, remained in operation until April 1937, after the decisions of the Supreme Court upholding the constitutionality of the Act. Thereafter, it was succeeded, as in Massillon, by the Employees Representative Association, which lasted until July 1937, when the Employee Representatives, who had been active in both the Plan and the Association, formed a new organization, the Steel Workers Union of America, which purported to be independent of the respondent. The formation and activities of the Association and the Steel Workers Union will be discussed hereafter.

The Plan at the Canton Works, as it existed until the latter part of April 1937, was substantially the same in structure and operation as the Plan at the Massillon Works. It is therefore unnecessary to describe it at length. It is sufficient to state that the respondent formulated and introduced the Plan, without submitting it to a vote of its employees; that throughout the existence of the Plan the respondent paid the Employee Representatives for attending meetings, during and after working hours, as well as for handling grievances; and that, down to the most minute item, the respondent defrayed all the expenses and

furnished all the facilities for the operation of the Plan.

From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation (Central Alloy District) Canton Works and has contributed financial and other support to it.

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2. *The Plan of Representation of Employees—Tin Plate Mill*

In August 1933 the Canton Tin Plate Corporation, then under independent ownership, inaugurated the Plan of Representation of Employees in its tin plate mill. After July 1, 1936, when the respondent purchased the mill, it continued this Plan in effect unchanged until April 30, 1937. With slight variations, this Plan substantially resembled the Plan at the Massillon Works. Neither at the time of its inauguration nor subsequently was it submitted to a vote of the employees. After July 1, 1936, the respondent continued to pay the Employee Representatives a dollar an hour for time spent during and after working hours at regular and special meetings, and continued to defray all expenses and furnish all facilities for the operation of this Plan.

On April 30, 1937, the respondent announced that in view of the Supreme Court decisions upholding the constitutionality of the Act, it would cease to pay the Employee Representatives. The Employee Representatives then sought to resign and discontinue the Plan, but on the solicitation of Sam Davey, then superintendent of the mill, decided to remain until the end of their term. At a regular meeting of the Employee Representatives on May 8, Sam Davey introduced Frank Geltz, Chairman of the General Body of Employee Representatives under the Plan and President of the Association at the Canton Works, who

explained the purposes of the Association and sought to enlist the support of the Employee Representatives. No action was taken on this proposal. In August 1937, according to Edward Kirkland, Secretary of the Plan, when the fiscal year of the Plan ended, no plans had been made for its continuation, because "we never asked the officials of the Republic Steel Corporation whether or not they wanted to continue the Plan."

From the whole record, we find that the respondent has dominated and interfered with the administration of the Plan of Representation of Employees at its tin plate mill, and has contributed financial and other support to it.

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3. *Events preceding the strike*

On July 2, 1936, shortly after the Union had begun its campaign to organize the employees in the Canton-Massillon area, the respondent issued its statement, described above, announcing that "Republic stands for the open shop principle. . . . Every Republic employee owes a duty of loyalty to the Company so that its best interests may be served. Conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management will not be tolerated."

The circumstances surrounding the discharge of Victor Arias on August 2, 1936, serve to illustrate the method by which the respondent at this time sought to give effect to this policy. Arias had been continuously employed by the respondent since 1927, except for several weeks in May 1935 when he took part in a strike at the respondent's Berger Manufacturing Company plant. When he applied for reinstatement, superintendent Ellaser told him he had been active during the strike and "that is bad on your card." Several weeks later, in June 1935, Arias was re-

instated. At that time, his foreman, David Carnes, offered him a job as a checker if he would report the activities of the men. Arias refused.

In July 1936 Arias joined the C. I. O. and was the first organizer in the Canton area. As such, he assisted Howard Porter and the other outside organizers sent to the Canton-Massillon district. It will be remembered that these organizers were given permanent shadows in the form of Long and McCallister, plant policemen at the Union Drawn Steel Company, whose special business it was to follow them. In the latter part of July, Arias conducted meetings on farms and obtained 25 applications for membership and signed up eight members for the union. On August 9, when he returned from a week's vacation, he was told to stay home, that he would be called when needed. "Why are they holding me out?" he asked Graham, assistant to superintendent Ellaser, "is it anything concerning my work?" "No," replied Graham, "not that I know of. There are activities that you are in that I don't know about or exactly what it is." Superintendent Ellaser informed him: "Vic, you are in Dutch. I don't think I can do anything for you." Arias pleaded his long service with the respondent, his satisfactory work, his necessity to support his parents. Ellaser replied, "I am sorry. I can't do anything for you."

Arias then left Canton in search of a job. In April 1937, upon his return, he met Frank Geltz, Chairman of the General Body of Employee Representatives under the Plan, who offered to help him. Geltz, however, was unsuccessful. He reported that he had seen Ellaser who said that Arias had a company police record, and that Ake, the employment manager, had told him that on his record Arias talked too much.

During his nine years employment by the respondent, Arias had received at least three promotions; at the time

of his discharge he was an inspector in charge of the chipping bed, earning approximately 90 cents an hour. Since his discharge on August 2, 1936, his total earnings, up to August 11, 1937, have been $164.40. He has not received regular and substantially equivalent employment elsewhere. Although the respondent in its answer denied that Arias was discharged because of his union activities, it produced no witnesses and offered no evidence to rebut Arias' testimony. We find that the respondent discharged Victor Arias for the reason that he joined and assisted the Union.

Having thus plainly warned its employees that it was prepared to enforce its statement of July 2, the respondent took further repressive steps to halt the growth of the Union. At the Canton Works and the tin plate mill, its activities paralleled those already described at the Massillon Works. Employees were called together at safety meetings once or twice a month, where a superintendent and foreman repeatedly extolled the virtues of the Plan and threatened employees with the loss of their jobs if they joined the "outside" union; employees were asked by a superintendent to sign petitions that they were satisfied with the Plan and were informed that the C. I. O. would never succeed; active union members were cajoled by supervisory employees not to waste their time passing out handbills, admonished to watch their step, and warned to stop trying to organize; a superintendent spoke with approval of a pamphlet which appeared in the plant, purporting to show that the C. I. O. was a revolutionary organization, controlled from Moscow, whose ultimate purpose was to overthrow the government of the United States by force and violence.[45]

On March 5, 1937, the respondent published its state-

45. *Join the C. I. O. and Help Build a Soviet America*, published by the Constitutional Educational League, Inc., New Haven, Connecticut.

ment of open shop policy in the newspapers, as described above. Carl Myers read the statement to the General Body of Employee Representatives, to whom he promised the same degree of cooperation from the management that they had received in the past. Besides Arias, three employees, whose cases we discuss below, were discharged for union activities at about this time.

Despite these acts of interference and coercion by the respondent, the Union continued to grow. On February 1, 1937, All Nations Lodge No. 1200 was established in Canton for the employees of the Canton Works and the tin plate mill. A number of the Employee Representatives joined the Union, and in certain departments of the plant the Union claimed to have achieved a membership of a large majority of the employees.

In the tin plate mill, where the Union claimed a membership of approximately 90 per cent, the respondent sought to coerce its employees to leave the Union by repeated threats to close the plant. Kenneth Poorman, a member of the Union, testified that in October 1936 at a safety meeting in the tin plate mill, James Davey, then operating superintendent of the mill, informed the employees that "this is an old and obsolete mill. The Warren mill is of a newer type. . . . If we stay out of labor trouble this can be the mill to operate." Although Davey denied having used the specific language attributed to him on this occasion, we are not impressed with his denial. He admitted having told employees on another occasion that the mill was old and obsolete and that he hoped they would stay out of labor troubles. And even from Davey's own studied and evasive account of his remarks at the October safety meeting it is clear that the employees could reasonably have taken away only one impression—that the respondent would shut down the mill if they joined the C. I. O.

In January 1937 superintendent Thomas approached Homer Downerd, president of Lodge No. 1200, and asked him why he had become so active in organized labor. According to Downerd, Thomas said, "'Do you think you are doing right?' and I said 'Yes, I think I have as much right to belong to organized labor as any one else has.' And he said 'Do you know what you are going to do?' and I said 'Yes, I do. We are going to put this organization across' and he said 'No, I will tell you what you are going to do—you are going to eventually shut down this plant and that will put not only me, but everyone else out of work and unless you quit, you will shut down the tin plate plant'."

In February 1937 superintendent Thomas saw Martin Beckner, vice president of Lodge No. 1200, passing out hand bills near the Canton Works. "Beckner," said Thomas, "you do not seem to be the same sort of a fellow, the kind of fellow that would be messing around with a bunch of radicals." "I told him," Beckner testified, "that I did not realize that I was a radical and he said, 'Don't you realize that Republic Steel will be closed down and won't operate any more?'"

On May 5 a notice appeared on the Bulletin board at the tin plate mill announcing that the mill would be shut down until further notice, and that employees should call Thomas later in the week and find out when operations were to be resumed. The tin plate mill remained closed until May 24, the day before the strike. It appears that the production at the mill during April and May in terms of gross tons was as follows: For the week beginning April 5, 541; April 12, 888; April 19, 609; April 26, 921; May 3, 315; May 10, 0; May 17, 0; May 24. 650. Samuel Davey, then superintendent of the Canton Tin Plate Division, testified that there was no production for the weeks of May 10 and May 17 chiefly because a strike had been

called at the plant of the Canton Enamelling and Stamping Company on April 29, at which time all orders from that company ceased, and that the respondent had in process or finished at that time approximately 1400 tons in the plant, equivalent to two week's work.

This obstensible reason for the shut-down is vitiated, however by reference to a number of events which occurred before and after May 5, when the shut-down was announced. On May 8 Beckner telephoned superintendent Thomas and asked when the mill would start up. "He told me," Beckner testified, "he did not believe the mills would start up until we got rid of that union." During the strike at the respondent's plants in Canton, Thomas told Beckner, " 'It looks like the Tin Plate had made a mistake. The rest of the mill is going to resume but I do not think the Tin Plate will ever resume again.' And he felt it was all the fault of the men organizing because we had 90 per cent of the organization at that time." Since the respondent did not call Thomas as a witness and made no showing as to his unavailability, these and the earlier threats stand uncontradicted.

Furthermore, the respondent was in the sole possession of proof in support of its allegation that a decrease in orders caused the shut-down. We are not satisfied that, in view of the circumstances described above, it has supplied an adequate business reason for its conduct. It has not shown the amount or relative size of the orders of the Canton Enamelling and Stamping Company, nor how long the strike there lasted, nor precisely to what extent that strike caused a decrease in orders.

In weighing the evidence upon this point, we also take into account the fact that, at this time, the respondent's Canton and Massillon plants were both under the supervision of Carl Myers, Acting District Manager for the one

region; and that the shut-down on May 20 of the Massillon Works was caused, not for the business reasons alleged by the respondent, but for the purpose of intimidating and coercing the employees.

It will be remembered that on May 3 Clinton Golden, Regional Director for the S. W. O. C., wired the respondent that widespread unrest prevailed among its employees over the uncertainty of the respondent's position regarding a signed collective bargaining contract, that this unrest had been accentuated by the lay-off of several hundred union members at the Canton and Massillon Works, and that the union urgently requested a conference to negotiate a signed, written contract. It thus appears that on May 5 the respondent gave a double answer to the union: Voss replied to Golden that he saw no necessity for a signed contract, but was willing to arrange a conference; Davey shut down the tin plate mill, a stronghold of the union, and locked out all but the maintenance employees.

From the whole record we find that the respondent shut down its tin plate mill at Canton and locked out almost all its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the union. The respondent thereby discriminated against its employees with respect to hire and tenure of employment and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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4. *The Employees Representative Association*

After the decisions of the Supreme Court on April 12, 1937, the General Body of Employee Representatives met on several occasions in the Canton Works on company time to discuss the formation, dues, and constitution of a new organization to succeed the Plan. The precise date upon which this organization—the Employees Representative

Association—was formed does not appear. The record does show, however, that on April 24 Joseph Cox, an Employee Representative, signed a membership card in the Association and with other Employee Representatives began to solicit membership for the Association in the plant on company time.[46] On April 28, according to the minutes of a special meeting of the General Body of Employee Representatives of the Plan, "the proposed amendments to the by-laws were again reviewed and it is the feeling of the General Body that no further changes should be made at this time." These amended "by-laws"—the amendments adopted April 22, 1937, referred to above[47]—became the constitution of the Association. The respondent's participation in the formulation of these amendments, and its modified control of the operations of the organization under them, have already been discussed. At the same meeting on April 28 a treasurer was elected and Representatives assigned to committees.[48] A motion was carried that dues were to be temporarily waived and "some other method of raising finances, possibly through a raffle, should be used." At the conclusion of the meeting a "force report," or schedule, covering the time spent in the meeting by the Employee Representatives, was prepared, according to which the Employee Representatives were to be compensated by the respondent. Thus, as in Massillon, the new organization was, except in name, virtually identical with the old.

As in Massillon, the respondent gave the Association a free hand to organize opposition to the union. Frank

46. The signatures of the Chairman and Secretary of the General Body of Employee Representatives under the Plan are affixed to this card as Chairman and Secretary of the Association.

47. See Section A, 3.

48. The office of Treasurer did not exist under the Plan, and apparently was the only office in the Association for which an election was held. As noted above, the Chairman and Secretary under the Plan remained as Chairman and Secretary under the Association.

Cutshall, a member of the Union, testified that on May 16 or 17 he was notified by his foreman to attend a meeting in the bar mill at the Canton Works. "They were going to close down the department and everybody was to go over and we was to be paid for the time we would be over there at the meeting. They said they were holding these meetings for each particular turn, the three turns. At one o'clock they blew the whistle and the crane men, the chippers, the grinders and everybody employed in the plant, or practically so, attended. The whole department was shut down." Dan Allen, an Employee Representative, announced to the 400 assembled employees that "they were forming a union for the employees of this division of Republic Steel and they did not want any outside union. They wanted to make preparations if a strike was called to meet up near the square and make a rush for it and go down in a body. . . . They were anticipating the strike. They asked approval of . . . some of the men in this group." Cutshall testified that he was paid for the time spent at this meeting.

On May 20 about 300 foremen and chippers at the Canton Works were notified to quit work to attend a meeting in the plant. Sammy Stokes, one of the chippers, testified that William Dunn, an Employee Representative, announced that "he was calling this meeting to explain this union plan to them, and he told the fellows that the company was expecting a strike and he wanted them all to sign a paper that they will work . . . and when the strike was called they should meet at the public square and they would prepare a way for them to go into the mill. And so he said 'I am going to pass out these blank pieces of paper and I want you to sign them'." Stokes testified that he was paid for his attendance at this meeting. Cutshall, who also attended this meeting, testified that Dunn announced that the purpose of the meeting was to form an employees

union for the Canton Works alone, in order not to "mix into any more troubles"; that Dunn handed out a copy of the pamphlet previously referred to, "Join the C. I. O. and help Build a Soviet America"; and that Employee Representative Allen launched into an attack upon John L. Lewis.

From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Employees Representative Association and has contributed financial and other support to it.

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5. *The Strike*

Although the events at Canton are not set forth in the record in such detail as those at Massillon, the testimony indicates that the respondent pursued a similar course in mobilizing its forces to break the strike. The following narrative is summarized largely from the testimony of witnesses for the respondent.

On or about May 18 superintendent Cornell told foreman Kuhns that the management intended to operate the plant in the event that the strike was called, and that he wanted the employees in the plant before it started. At 4:45 p. m. on May 25 Cornell called Kuhns to his office, told him there was to be "a meeting of the C. I. O. and it looked very much as though a strike was going to be pulled," and instructed him to have the employees come to the plant by 9 o'clock. On the night of May 25, when the strike was called, trucks arrived at the plant loaded with cots. Under the inducement of a bonus, free meals, and 16 hours' pay for 8 hours' work, a number of employees ate, lived, and slept in the plant from May 25 until July 1.

At 7 p. m. on May 25, before the strike was called, 12 Employee Representatives, including Frank Geltz, Ray Lilly, Dan Allen, and other active members of the Association, met in the assembly room of the respondent's Indus-

trial Relations Building at the Canton Works. In previous discussions this group had decided that if the strike was called they would form a back-to-work movement and seek to have a vote conducted under their auspices among the employees at the Canton Works on the question of whether the employees wished to return to work or to continue on strike. At this meeting plans were made to hold the vote in the City Auditorium on Thursday, May 27. At 8:30 p. m. the group conferred with plant superintendent B. R. Richardson, who expressed his approval of their proposed activities. At 11 p. m. the strike was called and the group retired to two rooms at the Belden Hotel in Canton, which thereafter served as the headquarters for its activities.

Within a few days this committee, augmented by a number of other Employee Representatives, undertook to patrol the city, armed with shotguns, allegedly to protect the homes of non-strikers. On several occasions it held meetings of employees who wished to return to work, and conferred with the mayor of Canton with regard to its demands. On June 10 T. K. Harris of the Canton Law and Order League, said of the Back-to-Work movement, "It is becoming more difficult to keep them from taking the law into their own hands." [49]

As noted above, on or about July 5, a few days before the National Guard were withdrawn from the Canton-Massillon area, 56 of the respondent's employees were bonded by the respondent and sworn in as private police officers of the City of Canton. Of the 56, one, B. R. Richardson, was a plant superintendent, another, Russell Horn, was a supervisory official and at least three were members of the Back-to-Work Committee.

Most, if not all, the expenses of the Back-to-Work

49. What the Editors are Saying About the Republic Strike—reprinted by Republic Steel Corporation, from *The Canton Repository* of June 10, 1937.

Committee were defrayed by the respondent. J. G. "Monk" Stewart, a supervisor of the guards, spokesman of the Back-to-Work Committee, and a roller in the mill with 10 or 12 men under him, testified that from May 25 until July 2, when the National Guard arrived, he received from the respondent for his work a total of approximately $500, calculated on the basis of his regular pay of $28 a day. Other members of the Committee testified that during this period they were paid approximately one and three quarters times their regular pay, or, in some instances, a bonus of $25 a week in addition to their regular pay. None of the witnesses for the respondent claimed to know who paid for the rooms at the Belden Hotel, although all admitted that no funds were collected by the Committee. It appears that Carl Lappin, an Employee Representative who acted as paymaster to the Committee for the respondent, rented the rooms in his own name.

Since employees participated in the Back-to-Work Committee and since it existed in part, if not wholly, for the purpose of dealing with the respondent concerning a labor dispute, it is a labor organization within the meaning of the Act. From the whole record, we find that the respondent has dominated and interfered with the formation and administration of the Back-to-Work Committee and has contributed financial and other support to it.

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6. *The Steel Workers Union of America*

On July 13, approximately two weeks after the plants had reopened, a number of the members of the Back-to-Work Committee whom the respondent had paid for acting as guards met at "Monk" Stewart's home to discuss the formation of an organization. Several days later Frank Geltz, Chairman of the Association, told Stewart that the former Employee Representatives, whose terms had ex-

pired in June, were also considering forming a new organization. After one preliminary meeting of the two groups, a formal meeting was held on June 20 in the Belden Hotel, where Stewart was elected temporary Chairman; Lilly, Secretary; and Geltz, Treasurer. On the following day, at a meeting in the Belden Hotel with Attorney Frank Bow, the name "Steel Workers Union of America" was selected, application cards drawn up, and chairmen of organization committees appointed. Although at the time of the hearing on September 15 no constitution or by-laws had yet been adopted, and no membership meeting had been held, Stewart testified that all employees at the Canton Works, except supervisory employees and police, were eligible for membership and that of 3900 eligible employees, between 2500 and 2700 had signed application cards for membership. Notices announcing the formation of the organization were posted in the plant; and members of the organization committees collected dues, initiation fees, and signatures to membership cards in the plant during working hours.

It is clear from the record that the Steel Workers Union, like the Independent Association at Massillon, was merely the successor to the Plan, the Association, and the Back-to-Work Committee, and still the creature of the respondent. Its officers were the officers of the predecessor organizations and its active members were former Employee Representatives or members of the Back-to-Work Committee. It received the same favors from the respondent as had the predecessor organizations. An organization with such antecedents, formed under such conditions, necessarily could not represent the free choice of the employees.

From the whole record, we find that the respondent has dominated and interfered with the formation and ad-

ministration of the Steel Workers Union of America and has contributed support to it.

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7. *The discharges*

The complaint, as amended, alleges that three other employees at the Canton Works, besides Victor Arias, were discriminatorily discharged. The record shows that all three were discharged or laid off by superintendent Hopkins. We take up their cases in chronological order.

Mike Ugranovich. Ugranovich, a member of the Union, had been employed by the respondent since 1934 as a grinder in the billet sheds. In 1935 he participated in the strike at the respondent's Berger Manufacturing Company plant. He testified that when he returned to work after that strike Edward Hopkins, superintendent of the billet sheds, "fired him off the job" for about a month, saying, "You got a job on the picket line and I cannot use you any more." Ugranovich then applied for his job to superintendent Baxter, who, in the presence of Hopkins, asked Ugranovich whether he had been on the picket line "and he asked me 'How long have you been in this country?' and I told him 'About 20 years' and he said 'Are you still crazy . . . I will give you your job back if you do not do that any more' . . . He told me I would have to stick with the company."

In December 1936 and January 1937 Ugranovich attended a number of safety meetings in the plant, at one of which, he testified, superintendent Hopkins said, "Don't belong to the outside union. You got to stick with the company union . . . If I find any more men (belong to the) outside (union), he cannot work for me." Ugranovich testified that on February 11, 1937, he was summoned to superintendent Hopkins' office where Hopkins said, "You have got some slow work, five and six weeks on a job . . .

Don't you mind that strike in 1935 . . . I give you a chance that time and still now there is something else outside, some kind of a name, C. I. O.—and you are in it already." Ugranovich was then discharged.

The respondent contends that Ugranovich was discharged on February 8, 1937, not for his union activities, but because he came to work in an intoxicated condition. Superintendent Hopkins testified that, although he himself had not seen Ugranovich in an intoxicated condition, foreman Eichelberger reported to him that at midnight both he and the grinder boss had smelled alcohol on Ugranovich's breath and had sent him home with instructions to return in the morning, and that at 9 o'clock the next morning Hopkins had laid him off indefinitely because he had come to work intoxicated. "He tried to tell me that he was not intoxicated. I told him he was because my two foremen had told me that." Hopkins also denied some, but not all, of the statements attributed to him by Ugranovich. He denied that he had mentioned the C. I. O. to Ugranovich at the time he discharged him or said that his work was slow, but asserted, on the contrary, that in his opinion Ugranovich was a capable worker and not slow.

Eugene George a grinder foreman, testified that at 12 o'clock on February 8, when Ugranovich reported for work, he smelt a strong odor of liquor on the man's breath, noticed that the surface of the steel on which Ugranovich was working had circular instead of horizontal marks, reported to foreman Eichelberger that Ugranovich was in no condition to work, and saw Ugranovich leave with a wobbly step. George added that he told Eichelberger that Ugranovich had a habit of laying off on pay day, that he had spoken to Ugranovich once or twice before about coming to work with liquor on his breath, and that he now recommended him for a discharge. Eichelberger confirmed

George's testimony and asserted that Ugranovich was apparently under the influence of liquor, that his work was being done in an improper manner, and that when Ugranovich left he walked in an uncertain condition.

Ugranovich, however, denied that he had come to work intoxicated or that he had been given that reason for his discharge; denied that he had been warned about coming to work intoxicated before, or that he had a habit of laying off for two or three days after pay day; admitted that the tool which he used had made circular instead of horizontal marks on the surface of the steel, but explained that the fault was due to another grinder in failing to have the required number of belts on the machine. Ugranovich also asserted that he had been "off booze for 28 months and never touched it."

In this conflicting state of the evidence it is instructive to consider the respondent's policy, as stated by George, Eichelberger, and Hopkins, with regard to men who come to work in an intoxicated condition. George testified that Hopkins had personally instructed him to send a man home if he came to work in an intoxicated condition, that he had observed hundreds of men in the mill with liquor on their breath and on certain occasions had himself come to the mill with liquor on his breath, but that he disciplined an employee by sending him home only if the liquor on his breath was very strong or the man wobbled. George also testified that of the hundreds of men whom he had observed with liquor on their breath, Ugranovich was the only one who wobbled and whom he reported. Eichelberger testified that the general policy of the company was that so long as a man could work safely and was not intoxicated to the extent that he wobbled, no matter how strong the odor of liquor on his breath, he was not sent home. Eichelberger also testified that he could not remember having recommended discharge of any of the

hundreds of employees who had come to work with liquor on their breaths, but claimed in the past eleven years to have recommended some men for two or three day lay-off because of liquor on their breaths. Hopkins testified that he sends an employee home but does not discharge him for his first offense in wobbling, and that even if he had smelled liquor on his breath a couple of times and he was wobbly he would lay him off for two or three days, but would not discharge him.

It thus appears that even if Ugranovich was intoxicated when he came to work, which he denies, and had come to work one or twice before with liquor on his breath, which he also denies, the normal procedure would have been to reprimand and discipline him with a two or three day lay-off instead of discharging him. Despite the respondent's policy, however, he was discharged, and, according to George, was the only man ever to have been discharged under the "wobbling" rule. In view of Hopkins' statement to Ugranovich at the time of his discharge, which is only partially denied, and certain of his other antiunion remarks, which are not denied, we are satisfied that Ugranovich was discharged not for his alleged intoxication but because he joined and assisted the Union.

Ugranovich has not received substantially equivalent and regular employment elsewhere. At the time of the hearing he had earned approximately $111 since his discharge.

Will S. Wright. During a strike in 1922 at the Canton Works, then owned by the United Alloy Company, one Ake, superintendent of employment for the United Alloy and later for the respondent, hired Will S. Wright as a strikebreaker, promising him that "if you stick with the Company, you will have preference for a job as long as you do not do anything out of the way with the Com-

pany." After working three months, Wright left the employ of United Alloy and worked elsewhere until 1933, when he was employed by the respondent as a chipper. In May 1935 Wright took part in the strike at the respondent's Berger Manufacturing Company plant. After this strike, when Wright applied for and was denied reinstatement, he testified that superintendent Hopkins told him, "Bill if you want to work here, you have to stick with the Company. You cannot have one foot over here and one over there and expect the Company to stick with you." In the early part of 1936 Wright was offered help in getting his job back by one Williams, a chipper employed by the respondent, whom Wright characterized as a "snitcher for the Company." Pursuant to Williams' instructions, Wright went to Ake, superintendent of employment, who gave him a note to Hopkins. Wright testified that Hopkins offered him a job if he would stick with the Company. Wright accepted.

After returning to work, Wright attended numerous safety meetings in the plant where superintendent Hopkins, foreman Johnston, and "Charlie, the bed foreman," on occasion told the employees, "You don't want to mess around with no outside union, because if you want to work, you cannot be tied up with no union." In the early part of 1937 Wright was asked by Beckner to join the C. I. O. Williams advised him, "If you aint signed, you better not sign, because the damn C. I. O. aint no good, if you want your job." Several weeks later Beckner again asked Wright in Williams' presence to sign a membership card. "Williams sneaked out," Wright testified, "and, about two days after that (on April 27) . . . I was called into Mr. Hopkins office." Hopkins informed Wright and other employees who were present that new men were being laid off in order to give the older men more hours. Wright stayed after the others had left and reminded Hopkins

that he had been employed in 1922 and that Ake had promised him preference. Hopkins replied that he had told Wright that if he wanted to work for the Company, he had to stay on the right side of the fence and could not have one foot over here and one over there, and that Ake was "not running the show." "I told him," Wright testified, " 'I am on the right side of the fence when I work.' And he said 'You are not dumb, you know what I mean'." Wright also testified that some of the chippers who were not laid off had less seniority than he.

The respondent contends that Wright was laid off with a number of other chippers, without discrimination, for purely business reasons. Hopkins testified that because of the lack of tonnage the respondent decided to lay off 37 chippers; that Wright was thirty-fourth in length of service, and was laid off in regular order; that the respondent's policy with regard to seniority was that if a man was laid off for 30 days or more, while there was work available, his seniority rights were lost; that Wright had been laid off on May 22, 1935, 6 days before the Berger strike and had returned to work sometime in 1936; and that with this lay-off Wright had lost the seniority rights which had accrued to him since his employment in 1933.

On cross-examination, however, Hopkins contradicted his earlier testimony with regard to the respondent's seniority policy, by stating that if an employee were laid off for more than 30 days, he would not lose his seniority rights. On this basis, it appears that Wright was entitled to credit for approximately two years' service, and that when he was laid off on April 27, 1937, the regular order of seniority was not followed.

Although Hopkins denied all of the statements attributed to him by Wright, we are convinced that his denials are not to be credited. The respondent had pointedly

warned its employees in its statement of July 2, 1936, that it would not tolerate "conduct detrimental to the interests of the Company and which may disrupt the satisfactory relations between employees and management." On March 5, 1937, after publishing the respondent's statement of its open shop policy in the newspapers, Carl Myers had summoned the Employee Representatives to a meeting at which he repeated the respondent's statement of July 2, 1936. The record contains uncontradicted testimony that other superintendents and foremen had warned employees not to join the union under threat of loss of their jobs. Moreover, although Hopkins denied having made the statements at safety meetings attributed to him by Wright, he admitted that he could not recall what he had said. Ugranovich's testimony with regard to certain of Hopkins' antiunion statements is undenied. Under these circumstances we are of the opinion that Wright was laid off on April 27, 1937, because he had joined or was suspected of having joined the Union.

Wright has not earned any money since April 27, 1937.

Sabri Shaban. Shaban was first employed by the respondent as a chipper from June 1933 until March 1934, when he left the respondent's employ for a visit to the "old country." In October 1936, upon his return, he applied to superintendent Hopkins for his former job. He testified that Hopkins asked him, "'You belong to a union?' and I say 'No.' 'If somebody go on the road and stop you . . . what are you going to say?' And I just figure and I sit two or three minutes . . .He said 'What are you going to say to me now?' I say 'I know I no have to sign my name because I am hungry.' He said 'If you listen to me that way, I am going to give you a job right now.' And he gave me a job."

On or about April 23, 1937, Shaban went to work with a copy of the "Steel Worker," apparently a union newspaper, in his back pocket. Shaban testified that Hopkins saw the paper, pulled it from Shaban's pocket, and said "'Why you no listen to me when I say I would give you a job' And he throw away that paper and didn't say nothing that time. In three or four days he called me in the office and he say 'You no listen to me that time when I was talking to you and I give you a job and you belong to the C. I. O. now'." Shaban was then laid off. He testified that many chippers hired with him on October 25, 1936, and others with less seniority were not laid off.

The respondent contends that Shaban, like Wright, was laid off on April 27 without discrimination, according to its policy of seniority. Hopkins testified that of the 37 chippers to be laid off Shaban was twentieth on the list, and that in determining Shaban's seniority he had counted the period from October 1936 to April 1937 and not the nine-month period in 1934 and 1935 when Shaban had worked for the respondent, in accordance with the respondent's seniority policy of cancelling rights which had accrued from former service, after a lay-off of 30 or more days. In view of Hopkins' later admission that an employee did not lose his seniority rights after such a lay-off, it appears that Shaban would be entitled to credit for his service in 1934 and 1935, even apart from his claim that men hired on or after October 1936 were not laid off. Although Hopkins denied all statements and acts attributed to him by Shaban, we do not find his denials convincing for the reasons cited in our discussion of Wright's discharge.

We find that Shaban was laid off on April 27, 1937, because he was suspected of having joined the Union. Shaban has earned $25 since April 27.

The cumulative testimony of Ugranovich, Wright, and Shaban, although denied in whole or part by Hopkins, satisfies us that Hopkins followed a policy of questioning employees on their union affiliations, and of discharging them or laying them off for real or suspected membership in the Union.

C. Youngstown

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Youngstown District was adopted in June 1933 and slightly revised in June 1934 and March 1937. On April 19, 1937, at a special meeting of the General Body of the Employee Representatives, McCoy, the Management Representative, announced that the respondent would withdraw financial support from the Plan. Shortly thereafter, the Employee Representatives formed the "Employee Representation Plan" which purported to be financially independent of the respondent, supplied themselves with membership cards and launched a membership campaign. On May 19, 1937, the Independent Federation of Republic Employees, herein called the Federation, was organized by the Employee Representatives for the dual purpose of lending support to the "new" Plan and taking measures to prevent the strike. Immediately after the strike was called and during the strike, the Federation sponsored the Back-to-Work movement and solicited signatures to back-to-work petitions. Thereafter, the Federation was combined with the Plan and a constitution and by-laws were adopted which purported to establish the Federation as a collective bargaining agency for the employees. The formation and activities of the "new" Plan and the Federation will be discussed hereafter.

The Plan at Youngstown, as it existed until April 19, 1937, was substantially identical in structure and opera-

tion with the Plan in Massillon. It is therefore unnecessary to describe it at length. It is sufficient to point out certain circumstances and incidents which attest to its domination by the respondent.

The Plan was introduced and fostered by the respondent. Its adoption was never submitted to a vote of the employees, although the preamble to the March 1937 edition of the by-laws states that the Plan "has been adopted by the employees and the Company for the purpose of collective bargaining." John Guest, one of the Employee Representatives, testified that he was first apprised of the Plan in June 1933 when the foreman of his department handed him a copy of the by-laws and he saw posters announcing that the Plan would be put into effect and that, pursuant to it, nominations and elections of representatives would take place.

All the expenses involved in the conduct of the Plan were defrayed by the respondent, and all the necessary facilities were furnished by it. The Employee Representatives were reimbursed by the respondent not only for time lost during working hours but also for any additional time spent in attending meetings and performing other work in connection with the Plan.

In spite of the provisions in the by-laws that nominations and elections shall be "so conducted as to avoid influence or interference with voters," the evidence indicates that even the election campaigns were not always free from at least indirect participation by the management. Thus in the 1935 elections for Representatives, Joseph O'Hara, who opposed the reelection of John Guest, was granted permission by the foreman to leave his work and go around soliciting votes among the employees. Such permission was not given to Guest.

The testimony of Ralph Mondora, one of the Em-

ployee Representatives, shows that, at least in some instances, Employee Representatives were more concerned with the remuneration they received for their services than with promoting the interests of their constituents. Mondora admitted having lost interest in the Plan after the respondent announced its withdrawal of financial support. He testified, "We tried it and got to a point that there wasn't no funds, and we quit; I quit it as I wasn't going to use my time representing anybody, so I dropped out."

The futility of the Plan stemming from the respondent's control is strikingly illustrated by the operation of the Joint Committees and the Joint Appeals Committee, Joint Committee No. 4, which were composed of five Employee Representatives and five Company Representatives. The submission for adjustment of grievances to Joint Committee No. 2, in charge of wages, employment, schedules and working conditions, generally resulted in a five to five vote. The same result ensued upon an appeal to the Joint Appeals Committee. Such a deadlock generally ended the dispute and, in effect, constituted a decision against the employees. It is further significant that even at the first annual meeting of Joint Committee No. 2, when officers were being elected, repeated balloting for chairman resulted in a five to five tie. The Employee Representatives finally conceded the chairmanship to the management.

Numerous provisions in the bylaws of the Plan reflected management control. Typical were the provisions requiring the approval of the Management Representative for holding special meetings of the committees, and the consent of the management in order to put the question of the dissolution of the Plan before the employees at an annual election.

At a number of meetings of the General Body, the Em-

ployee Representatives themselves signified their dissatisfaction with the Plan and leveled criticism against its operation. Thus at a regular meeting held on February 25, 1937, the General Body voted its protest against the methods used by some superintendents and foremen in calling in employees who had asked an Employee Representative to act for them, and requested that they be restrained from doing so unless with the consent and in the presence of the Representative.

At a special meeting held on March 15, 1937, the General Body discussed the sentiments of the employees relative to the Plan and recommended the following:

"1. A change in the Plan whereby it would not be dominated by the Management.

"2. A small fee of 25c of monthly dues and the right to use the check-off system to make the Plan self-supporting.

"3. The elimination of Nos. 2 and 4 Joint Committees as has been proven nothing but tie votes are ever counted in those meetings.

"4. The right to hold meetings with the men they represent . . .

"6. When agreements are made, that they be made in writing and not orally.

"7. The right to recall Representatives.

"8. That when a case is presented to Management, to speed it up and not carry it over a lengthy period of time . . .

"10. The right of the Employee Representatives to hold a meeting and to have the employees whom they represent cast a ballot as to their choice of the Plan—whether or not they wish to continue, or to have the check-off system of a monthly fee."

These proposals were submitted to the management at

the meeting of the Central Council of Employee Representatives which was held in Cleveland on March 18, 1937. The policy of the management announced at the meeting was thereafter reported to the General Body at a meeting held on March 25, 1937. The management indicated that there was a possibility of eliminating Joint Committees Nos. 2 and 4, that it would give permission to Employee Representatives to hold meetings with their constituents, that it would grant the right to recall Employee Representatives, and that it would endeavor to speed up cases as much as possible. The management categorically refused to enter into any written agreement and to give permission to use the check-off system for dues. Significantly, the management was silent on the question of eliminating its domination over the Plan and of determining by secret ballot whether the employees desired the continuance of the Plan.

On the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation at its Youngstown District, and has contributed financial and other support to it.

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2. *Events preceding the strike; formation of the "new" Plan and the Federation*

The organizational activities of the S. W. O. C. in the Youngstown District began in July or August 1936. At some time thereafter, headquarters were set up in the Terminal Building, and Republic Lodge 1331 was established. Commencing in October or November, meetings were held first in Truck Drivers' Hall and then in the Roumanian Hall.

Surveillance of the meetings by company police began almost immediately. Joseph Gallagher, one of the first employees of the respondent to join the S. W. O. C., testified

that whenever a meeting was scheduled, company police were present outside the meeting hall. Particularly conspicuous among the company police was Snyder, who, in the words of Gallagher, seemed "as though he was assigned permanent to that kind of work." The attitude of the company police is illustrated by the verbal altercation which, according to Gallagher, took place between them and Burke, an S. W. O. C. organizer, outside of Truck Drivers' Hall where a meeting was scheduled. An automobile with company police was parked near the hall. Burke said to them, "You better get going, rats," and the reply was, "We are here to stay if we have to shoot our way through it. You'se better get going."

On January 23, 1937, Gallagher was discharged. He had been employed as an inspector in the electrical department, and his duties consisted in making the rounds of inspection and answering whistles summoning him in case of any trouble. The evidence is conflicting with respect to the circumstances attendant upon his discharge. John H. Graft, the electrical superintendent, testified that during that time there was a flood condition in Mahoning Valley, that Gallagher was warned to "watch his step," and that he was nevertheless caught asleep in the control house, or "shanty," where inspectors were not permitted to rest. Graft further testified that he did not discharge Gallagher but merely told him to go home and get some sleep, and that he returned for his money and never requested to be permitted to come back to work. Gallagher however, testified that he was always accustomed to rest in the "shanty" when there was no immediate work without anyone ever objecting, that there was no danger in his department that night, and that he left the shanty immediately upon the blowing of the whistle. According to Gallagher's testimony, the following conversation took place:

"... my superintendent, Mr. Graff (Graft), says to me: 'Joe, I had Mr. Walker blow that whistle for you.' I says, 'What is it for, Johnny?' and he says: 'Well, you have been sleeping in there; you can go ahead home until I send for you.' I says: 'Well, you have got to give me a better answer than that, Johnny, before I ever accept it ...'

"He says: 'Well, Joe, I know you couldn't have been sleeping for you answered the whistle too soon, but,' he says, 'if I was you, I would go ahead on home.' "

When Gallagher returned to see Graft the following morning, the company police refused to let him enter. On pay day he received his money and was never asked to return to work. In view of the open hostility of the respondent toward outside unions and Gallagher's generally known membership in the S. W. O. C., we are inclined to the belief that the incident in the shanty was a pretext seized upon by the respondent to justify its conduct and that Gallagher was in fact discharged because of his affiliation with the S. W. O. C. However, it is unnecessary to make a finding with respect to this discharge, since it is not a basis of the complaint.

Beginning in February the S. W. O. C. organizers intensified their activities by visiting employees and talking to them about organization. Espionage by the respondent became correspondingly more systematic and persistent. Snyder was stationed near the headquarters of the S. W. O. C. in the Terminal Building and apprised other company police of the movements of the organizers. Gallagher testified that he was followed from the time he left his house at night to go to the Terminal Building until he returned. Charles Fagan, another organizer, testified to a particular occasion when he and Gallagher were followed "all around town" upon leaving the Roumanian Hall where they had

attended a meeting. The automobile that usually followed the organizers bore license number H-763-V. On making an inquiry at the Bureau of Motor Vehicles in Columbus, Gallagher was informed that this license number was issued to Carl W. Parker, another of the company police.

Spying on organizers was not the only method by which the respondent endeavored to stifle union organization. Resort was had to the Plan as a means of spreading anti-union propaganda. Thus, at a meeting of the General Body in February, Elliott, district manager of the respondent, stated that it was up to each of the representatives to maintain the Plan in operation by going among their constituents and pointing out to them the merits of the Plan over the C. I. O. or any other outside organization.

This method was apparently ineffective. Unsuccessful in their attempts to get an increase in the wage rates, the Representatives, in a resolution adopted by the General Body on March 5, stated, "This Body feels it would be an insult to their intelligence to ask them to go among the men in favor of a plan that has failed to get for them what the employees of the other mills already enjoy." The respondent began, therefore, to pursue a more direct course of action.

On March 13, the day following the election of officers in Republic Lodge 1331, the foundry, a unit within the mechanical department, was suddenly closed. Twelve of the 14 men employed in the foundry were members of the S. W. O. C. and included Thomas White, President of the Lodge, and Charles Fagan, a member of the Grievance Committee. William Manley, superintendent of the mechanical department, testified that the foundry was closed because there was a backlog of orders for Bessemer Steel and the iron used at the foundry was required for the Bessemer plant.

He further testified that for a period of at least 30 days prior to the closing of the foundry, conferences were held with the heads of the Bessemer plant, and it was decided to discontinue operating the foundry.

This explanation is not convincing in the light of the attendant circumstances. The foundry had been in operation for 20 to 30 years and required only about 600 to 700 tons of iron per month, which amounted to two per cent of the iron used at the Bessemer plant. White testified that at about 3 o'clock in the afternoon of March 13 Manley came into the foundry and said, "Boys, I have bad news for you. Our foundry is being closed down for good." by way of explanation, he stated that he had orders from "up above" and was carrying them out. When Manley made the announcement, the molds in the foundry on which six men had been working since 10 o'clock in the morning were almost ready for pouring. It would have required only about 3 additional hours' work to close the molds and then cast them. Instead of completing the work, the men were ordered to knock the molds out. It is unlikely that the closing of the foundry would have proceeded in such haste and disorderly fashion if it had been made necessary by a shortage of Bessemer steel, and previously discussed at conferences.

We conclude rather that the closing of the foundry, where substantially all the employees belonged to the S. W. O. C., was another step in the continued efforts of the respondent to check the increasing union organization. It was designed to discourage union membership, and was particularly directed against White and Fagan, who were thus discriminated against in regard to the hire and tenure of their employment.[50]

50. On March 15 White, Fagan, and about four others who had been employed in the foundry interviewed McCoy, the Management Representative, regarding their positions. McCoy promised to extend his efforts on their behalf, but informed them that they would have to be hired through general

At about the same time, individual employees in other departments were called in by supervisory officers and questioned about their affiliation with the C. I. O.

Richard Elder, a first helper in the open hearth department, testified that on March 13 George Putnam, the superintendent of the same department, and Jones Cahill, the assistant superintendent, told him that they saw his name on the Executive Committee of Lodge 1331 in a C. I. O. pamphlet, and asked him whether he belonged to the C.I. O. Three days later, Putnam summoned Elder to his office and, according to Elder's testimony, said, "Dick, I always thought you was a good friend of mine . . . it don't look like it when you join the C. I. O. . . . I just want to tell you that lots of times we have to let good men go that we don't like to lose, on account of union activities . . . I just wanted

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labor. According to White's testimony, this signified being rehired as new men. When the men returned the same afternoon to get their tools, Bill Sponsler, the foreman at the Haselton furnace, handed them discharge slips. White objected and stated that he wanted to wait until pay day and look around in the meantime. But Sponsler replied, "I have my orders. You take these slips, and go and get your money."

Two or 3 weeks after the foundry was closed, McCoy secured employment for Fagan on the general labor gang at $5.00 a day. About 2 or 3 weeks thereafter Fagan was transferred to the coke works. Dissatisfied, he asked Manley for a better position. Manley said he had nothing for him. At about the same time, the foreman at the coke works asked Fagan his name and number, and said, "That is all I want to know." Several days later the same foreman told him he did not need him. Fagan returned to the labor gang, but worked only 1 or 2 days a week. Shortly before the strike, he received the vacation to which he was entitled.

Prior to the closing of the foundry, Fagan earned 84½ cents an hour and worked 6 days a week. He has not earned any money since he stopped working on the labor gang.

White was also offered employment on the labor gang, but he refused to accept it, and stated that in view of his years of service he thought he was entitled to a better position. Three or 4 weeks later, White told McCoy that he had been working out of town, but desired to return to the employ of the respondent. McCoy said he had to consult "one fellow" in the plant before White could be hired. Several days later, McCoy told him he could not take him back.

Prior to the closing of the foundry, White earned $44.16 a week. On about March 16 he obtained employment elsewhere and worked for about 6 weeks prior to the strike, commencing again on August 2. He left his employ at the beginning of the strike in order to participate in it as president of Lodge 1331.

to tell you that." Putnam admitted questioning Elder about his C. I. O. membership, although he denied making the other statements and asserted that he merely warned him that he would be discharged if he did any organizing on company time.

Jerry Simcox, a second helper, testified that on March 13 or 14 Cahill and Putnam told him they understood he was an executive of Lodge 1331 and asked him how long he had been a member of the C. I. O. and how many followers he had.

James Farner, a welder in the line department and a member of the Grievance Committee of Lodge 1331, testified that Graft, the superintendent of the electrical department, asked him why he wanted to join the C. I. O. and get himself mixed up with a "bunch of cheap Bolsheviks." According to Farner's testimony, Graft also stated that the respondent would never recognize the C. I. O. and that the superintendents and heads of each department were to head "this thing off and save all our necks." Graft testified that he merely warned Farner not to solicit employees on company time and on company property.

Joseph Stevens, a second line man, testified that Graft called him and said, ". . . they tell me you belong to the union quite a bit . . . I would rather you keep your nose clean." Graft admitted talking to Stevens about his union activities, but denied making any statements designed to discourage him from continuing his union activities outside of the plant.

As indicated, the respondent's witnesses denied making certain statements intended to discourage union membership. However, the accounts given by the witnesses for the Board are more consistent with the evidence as a whole. Moreover, the respondent's witnesses admit that they ques-

tioned the employees regarding their C. I. O. membership. Such action by itself constituted intimidation and coercion of the respondent's employees.

Likewise, at about this time supervisory officers in different departments intensified the campaign of intimidation and coercion by spreading propaganda in favor of the Plan and against the C. I. O. at meetings of the employees called by them for that purpose. Thus, in the middle of March a notice was posted on the bulletin board of the line shop in the electrical department announcing a "safety meeting." However, no safety measures were discussed. According to Stevens' testimony, Graft, the superintendent of the electrical department, spoke as follows:

> "Men, I am here in behalf of the ones that are interested in themselves and to try to convince the ones that are not interested in themselves, to be interested in themselves . . . Big Chief John L. Lewis . . . has never done anything for the laboring class of people . . . he won't do anything, only get your money and go on with it . . . you won't have any more than you have got, only you will be just out of a job or cause you a lot of trouble, you can't never get over, you lose friends . . . (the Representative Plan) has always give satisfaction . . . All the grievances that we have ever had to settle, have been carried out and treated the men right . . . regardless if every man in here joins a union, we are not going to recognize it. We are not going to sign any contract . . . we are not going to have no closed shop or no collective bargaining."

Stevens' version of Graft's speech is, in substance, supported by the testimony of Farner, who also attended the meeting. Graft denied attacking the C. I. O. and testified as follows:

> "I told them that there had been many pamphlets,

> booklets circulated in the plant, talking among the men, and articles in the newspaper as to what one would have to do to hold his job with Republic Steel Corporation. I told them that I had called them together to tell them just exactly what the policy of the Republic Steel Corporation was, and that it was not necessary to join any organization regardless of what anybody said, to get their job or to hold their job
>
> "If they did join, that was their business. That under the Representative Plan we had been able to make very good strides. That I thought that our policy was the best policy for the men."

Several other meetings of a similar nature were held at various times during the month of April, after Golden, the Regional Director of the S. W. O. C., had written to Girdler regarding a proposed agreement. These meetings were addressed respectively by Manley, superintendent of the mechanical department, Elliott, the district manager, and Levantry, the works manager. In these addresses the C. I. O. was attacked, the Plan was extolled, and the policy of the company with respect to outside organization was emphasized. Thus, Elliott reiterated that the respondent would never sign with the C. I. O. or any other outside organization, adding, "Some of you fellows look at me as though to say 'to hell they won't,' but I say they might, but it would be a long, long struggle." Similarly, Levantry remarked, "This Company will never sign up . . . we will shut the mill up and board it up before we will sign with the C. I. O."

On April 19, as set forth above, McCoy announced at a special meeting of the General Body that the respondent was withdrawing financial support from the Plan. As reported in the minutes of this meeting, McCoy stated that "under the Wagner Labor Bill he would not be permitted to carry our time (as he has in the past) for attending

meetings and explained that men off duty would not be compensated, but added that *men attending meetings during their regular working hours would be carried on their regular job.*" (Italics supplied). A motion was then passed that a monthly fee of 25 cents be assessed against all members of the Plan, and a treasurer was elected. The only other significant change in the operation of the Plan was that membership was no longer automatic upon voting for a representative, but depended upon signing a membership card. In addition the name of the Plan, as it appears on the membership card, was changed to "Employee Representation Plan."

Shortly thereafter the Representatives began a membership drive in the "new" Plan and solicited employees within the plant and during working hours. The campaign does not appear to have been successful. Ralph Mondora, one of the Representatives, testified that the "Representatives tried to form their own organization, financed through the employees," but whatever funds they managed to secure were soon exhausted. Mondora testified also that he handled no grievances after April 19. When employees came to him, he "just turned them down, told them there isn't no such thing."

Plan activity was suddenly revived after the Cleveland conference of May 11 between representatives of the S. W. O. C. and the respondent. At the same time various measures were taken regarding the impending strike.

About a week before the strike, the Employee Representatives met to discuss steps for the prevention of the strike. Levantry, the works manager, was invited to attend. The Representatives voted to circulate through the plant and talk with the men. This was done. In addition, the respondent's supervisors assisted the Employee Representatives in holding meetings during working hours and

on the respondent's property regarding the strike. Thus a meeting, previously announced by the foreman, was held in the machine shop. Butler, the assistant master mechanic, introduced Jack Jones, an Employee Representative. In the course of his speech, Jones said, "We can have an organization of our own in here. We don't need this C. I. O. All they want is your dollar . . . Our representative plan is good enough for us, and I have some cards here for you fellows to sign that want to work. You fellows that want to hold your jobs, sign these cards." He then distributed membership cards in the Plan.

William Cummings, a machinist, testifying for the respondent, stated that shortly before the strike he was given permission by his foreman to dictate a petition to the Mayor of Youngstown for the signature of employees. In substance, the petition read, "We, the undersigned, not wishing to strike, in the event of a strike, ask for police protection to enter and leave the plant." Cummings could not recall on cross-examination where he derived the notion of preparing such a petition. He testified, "I might have gotten the idea from newspaper talk or something I had heard, that when there was a strike, that this had been done; now I don't recall whether or where. I didn't burden my mind particularly." Whether or not Cummings himself conceived the idea of the petition, he prepared it and solicited signatures on the respondent's time and within the plant. Cummings' memory was equally vague regarding the disposition of the petition after he had obtained the signatures thereto. He testified that two men whose names he could not clearly recollect asked him for a copy of the petition and he gave it to them. He also failed to recall the conversation that took place between them.

There is evidence that the same or a similar petition was circulated in other departments. John Guest, an Employee Representative, testified that a clerk in the electrical

department phoned and notified him that a petition was waiting for him in the office and that they were "in a hurry to get it signed." Guest went to the plant and circulated the petition.

On May 19, at a meeting held in the office building of the respondent, the Independent Federation of Republic Employees, Youngstown District, was organized. Guest testified that a notice announcing the meeting was posted on the bulletin board in the masonry department. Mart Murphy, chairman of the General Body under the Plan, presided. Temporary officers were elected, John L. Smith, a mechanic in the electrical department, being elected chairman. Murphy explained that the purpose of the Federation was not to engage in collective bargaining but to cooperate with the Plan. He requested Representatives under the Plan not to run for office in the Federation.

Between the date of its organization and the strike, a number of departmental meetings were held by the Federation on company time. At each meeting John Smith announced from the chair the date of the succeeding meetings. Employees of the department next scheduled to meet were notified, on company time and property, by employees who had attended the preceding meeting. Walters testified that his foreman informed him of a meeting in the mechanical department. He inquired whether attendance was compulsory and the foreman replied, "Manley wants to see you all there." At the meeting, Cummings, a machinist, spoke through a microphone. He launched into a eulogy of the Plan and said, "This outside Union here, they are not for you or me." Another speaker talked about the Plan, the coal fields, the C. I. O., and John L. Lewis. He repeated, "They are not for you, they will do to you fellows just like they did to the fellows in the coal fields. They will double your dues . . . You can't stop them once you sign their cause, then they can do as they plea e." Murphy pointed

to Plan and Federation membership cards and said, "You fellows that want to work, sign the cards." The pamphlets of the Constitutional Educational League entitled, "*Join the C. I. O. and Help Build a Soviet America,*" were distributed.

Membership in the Federation was solicited not only at meetings but also individually. Michael Krill, an employee in the galvanizing department, testified that he was called in the foreman's office while another employee took over his work. Amal Valley, an Employee Representative, was seated at the foreman's desk. Valley asked Krill whether he wanted to join the Federation and handed him a membership card. He then remarked that there was not much use talking to Krill because he knew he was "100 per cent C. I. O.," but that he was supposed to speak to everyone in the plant. He added that Krill would be "better off" by joining the Federation. Krill was paid for the time so spent.

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3. *Events during the strike*

The strike commenced in Youngstown on the night of May 26. Immediately thereafter the Federation began to sponsor a back-to-work movement. Without consulting the other officers of the Federation or discussing the matter at any meeting, John L. Smith, the chairman, secured an office in the Dollar Bank Building, adjacent to the offices occupied by the Youngstown Sheet and Tube Federation of Employees. Back-to-work petitions were prepared for the signature of employees. Some of the petitions were retained in the office and others were distributed outside. Smith reimbursed the persons canvassing signatures for the gasoline used by them. Postal cards in the following form were dispatched to employees:

"To All Republic Steel Employees:

"If you are desirous of returning to work as soon

as possible, stop in at Room #212 Dollar Bank Bldg., and sign up with the BACK TO WORK movement sponsored by the Independent Federation of Republic Employees.

John L. Smith,
Chairman."

The record does not indicate the source of the funds which were used in carrying on the back-to-work movement. Cummings testified that at one of the Federation meetings, the date of which he could not recall, the question of dues was mentioned and he handed Mart Murphy a dollar. Chester Crosby, ladle crane man, also testified that he paid dues without stating, however, the date of such payment. There is no other evidence, however, that at that time dues were either required or contributed by the employees.

Early in July, after the mills were reopened, the Federation held a meeting in order to combine the Federation with the Plan. As stated by Smith, "The purpose of that meeting was for the Independent Federation of Republic Employees to drop the old Representative Plan or combine the two of them together as one." He testified further,

"Well, at that time the officers of the Representative Plan resigned and we took over the reins."

It was also decided to "donate" the members under the Plan to the Federation. The testimony of Ralph Mondora is revealing:

"Q. Had the question ever been put to the members, and whether they wanted to become affiliated with this Independent Federation?

"A. No sir.

"Q. Whether they wanted to be donated?

"A. No sir.

"Q. That was an action that the officers were taking without the consent in any way of the members,

is that correct?

"A. That is correct."

At a meeting held in the Central Auditorium on July 25, a constitution and bylaws were adopted. Application cards were prepared. Employees were solicited to sign application cards within the plant and on the respondent's time.

Although the new constitution and bylaws purport to make the Federation independent in form of company control, they cannot conceal its real purpose. The record clearly shows the policy of the respondent to perpetuate in its plants an organization subservient to its will and purposes and designed to thwart self-organization on the part of its employees. The Federation is merely a continuation of the Plan under a new guise and is tainted with the same illegality. Before the strike Federation meetings were announced by supervisory employees and held on the respondent's property. Prior to the strike and after the reopening of the mills, employees were solicited to join the Federation on the respondent's time and property.

On the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Employee Representation Plan and the Independent Federation of Republic Employees, Youngstown District.

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4. *The refusal to reinstate certain employees*

The mills in Youngstown reopened on June 25. Although the strike was still in progress, many employees returned to work. A number of them were refused reinstatement.

Harry Rigby. Rigby had been in the employ of the respondent for 26 years as an inspector in the electrical

department. He joined the C. I. O. late in June 1937. Prior to the strike he was earning about $44 a week.

On Friday, June 25, Rigby and five other inspectors in the same department met and decided to return to work the following Monday. Kling, the foreman, phoned and said he needed men to start the mill at once. Rigby informed him of their decision to return Monday. Pursuant to Graft's instructions, Kling called again and said that if they did not return to work at once they would be replaced. When the men came to the mill on Monday, Kling said, "You fellows ain't got no jobs." Rigby saw Graft on July 13. Graft said, "Rigby, they tell me you are a chronic kicker. . . . Charlie Ritchie told me that." Rigby replied that he did not believe that and that he had known Charlie Ritchie for a long time. Graft replied, "Well, I ain't got no more to say to you. You go home and stay home until I call for you." Thereafter, Rigby made attempts to see Graft again but was unsuccessful. Graft testified that the other inspectors admitted they made a mistake in not returning when told to do so and that they were all reinstated.

Rigby did not earn any money between the commencement of the strike and the hearing.

We are of the opinion that Rigby was not reinstated with the other inspectors because of the respondent's belief that he was "a chronic kicker." We find that Rigby was refused reinstatement because of his membership and activity in the Union.

John Lazar. Lazar commenced work for the respondent in 1919 and worked regularly until the strike as an inspector in the inspection department. He joined the C. I. O. in April 1937 and served on the picket line for about a week. Prior to the strike Lazar worked from 42 to 48 hours a week at the rate of 92 cents an hour.

On June 26 Lazar interviewed Bill Conklin, the as-

sistant superintendent, regarding his job. Conklin said he would call him when needed. Lazar returned on June 28 to see Reubendale, the superintendent. Nearly all the other inspectors were there. Reubendale gave them checks and told them to start working. When Lazar's turn came, he said, "No, I don't give you your check yet," and asked him what he was doing in the picket line carrying a stick or a club. Reubendale finally said, "Well, I can't do nothing for you, John, just go on home, when we need you, we will call you."

Lazar spoke to his foreman, Dan Weeks, shortly after the Fourth of July. Weeks said, "Well, John, I am sorry to lose you from down here. I like to have you back, but I can't do nothing for you. You have got to see Mr. Reubendale." Lazar called Reubendale on the telephone repeatedly and was always told to call "the last of the week" or the "first of the week." On August 9 Reubendale said to him, "I can't do nothing for you, John. Why don't you go in the C. I. O. . . . They will help you out."

Lazar has earned $2.50 since the beginning of the strike.

It is clear that Lazar was refused reinstatement because of his connection with the Union and of his activity in the strike. The respondent apparently attempts to justify this discrimination on the ground that Lazar carried a stick or a club in the picket line. For the reasons discussed hereinafter we are of the opinion that, under the circumstances of the case, such conduct upon the part of Lazar, if true, would not warrant the respondent in refusing to reemploy him.

Michael Krill. Krill worked continuously for the respondent from July 1936 until the strike. Prior to the strike he was employed in the galvanizing department and was earning from $6.75 to $7.00 a day. He joined the C. I. O.

in January 1937, acted as a volunteer organizer, and served on the picket line.

At about 6 p. m. on June 28, Krill returned to the plant to seek his job. Linden, the foreman, told him to come back an hour later. Krill inquired whether it would be satisfactory if he returned the following morning since he had to go back home, change his clothes and get his glasses. Linden replied that it would be all right, provided he returned prior to the dead line, but he did not know when it was. When Krill came early the following morning, Linden said that it was too late and that the dead line was already in effect. Linden also stated that he was aware of the time of the dead line the previous night, but did not want to apprise him of it. Linden then suggested that he register at the employment office.

Krill called again in July, and Linden promised to send his number to the employment office if he was needed. On August 13 Linden told Krill that he turned his number in but that there was something wrong. He then asked him whether he was on the picket line and said they probably had his picture in the main office.

Krill has earned about $25.00 since the strike.

We find that Krill was refused reinstatement because of his connection with the union and his assistance to the Union during the strike.

Balare Chismus. Chismus started work for the respondent on May 18, 1936. Prior to the strike he worked as a laborer in the bar mill. He joined the C. I. O. on May 28 and served on the picket line.

Chismus returned to the mill on June 27 or 28 to inquire about his job. The turn foreman asked him, "Why did you monkey around the C. I. O.," and told him to wait for Warnock, the general foreman. Warnock said he did

not have anything for him then and told him to come back in a few days. On a subsequent occasion Warnock advised him to go to the employment office. At the employment office he was told that "there is nothing to do now." He made another attempt to see Rose, the employment manager, but was prevented by the company police. According to Warnock's testimony, Chismus admitted to him that he was arrested on the Market Street bridge on the night of June 10, and for this reason he was denied reinstatement. Warnock did not assert that Chismus was guilty of any acts of violence. Warnock further admitted that as far as he knew Chismus did not carry a club on the picket line.

Since the strike Chismus has earned about $68.00.

We find that Chismus was refused reinstatement because of his affiliation with the Union and his assistance to the Union during the strike.[51]

William A. Haren. Haren commenced work for the respondent in July 1926, and was employed as a mixer crane man. Prior to the strike he worked 40 to 48 hours a week at 77½ cents an hour. He joined the C. I. O. on August 6, 1936.

On June 29 Haren went to the mill to inquire about his job. Charlie Ritchie, the foreman, asked him, "Where is your club," and said, "You have caused a lot of trouble around here. You have agitated . . . If I need you, I will call you." Haren asked, "That means that I am fired?" Ritchie replied, "No, we don't fire anyone."

Two or 3 weeks later Haren returned to the mill again. Pursuant to a policeman's instructions Haren went to the

51. In the respondent's offer of proof filed with the Board on March 28, 1937, it is stated that on or about October 20, 1937, Chismus pleaded guilty to a charge of rioting. For the reasons discussed hereafter we are of the opinion that, under the circumstances of the case, such offense is not a bar to his reinstatement.

employment office. Haren told Rose, the employment manager, that he wanted to register. Rose said, "What do you mean, register? How long do you fellows think we are going to hold your jobs here,—forever? Didn't you know that the gates had opened 2 or 3 weeks ago?" Haren testified that he thereafter phoned Graft and received the reply, "We don't have anything for you, Bill . . . We will notify you when we need you. We are all filled up."

Graft testified that he refused to reinstate Haren because he had an affidavit from one of the employees to the effect that Haren was on the picket line carrying a club. Graft does not know either the size of the club or the length of time Haren carried it.

Haren has not earned any money since the strike.

We find that Haren was refused reinstatement because of his connection with the Union and his activity in the strike. As in the case of Lažar, the respondent was not justified in refusing to reemploy because of his alleged activity on the picket line.

Charles Neverdusky. Neverdusky began to work for the respondent on March 9, 1936. Prior to the strike he was employed as a hooker in the cut and lap shipping department and earned about $7.00 a day. He joined the C. I. O. on January 9, 1937.

Neverdusky was out of town on June 28, the date of the dead line in his department. On June 30 he returned and interviewed Rose at the employment office. Rose was unable to find his number in the files and said, "You are off the pay roll, altogether . . . You have to get rehired." Neverdusky came back the following day and showed Rose his pay stub. Rose made another unsuccessful attempt to find his number, and could not tell Neverdusky the reason for its absence. The latter persisted, ". . . who else but

you could give me a reason? They would have to give you a reason for taking me off the pay roll." Rose said, "Who the hell am I to give you a reason? Get the hell out of here."

At the end of July or early in August, Neverdusky spoke to McCoy, the Management Representative under the Plan, regarding his job. McCoy said to him, "You are one of these guys, C. I. O. men that was on picket line carrying a club?" Neverdusky denied that he carried a club. McCoy said, "Well, you are one of these smart guys went down and filed with the Labor Board." To Neverdusky's query, "So that is where we stand?" McCoy replied, "That is exactly where you stand."

Neverdusky has earned $12.00 since the strike.

We find that Neverdusky was refused reinstatement because of his connection with the Union, his assistance to the Union during the strike, and his filing a charge with the Board.

Anthony Martin De Long. Anthony Martin De Long was employed as a hooker in the electric weld department from April 1935 until the strike. Prior to the strike he earned about $5.00 a day. He joined the C. I. O. in April 1937 and served on the picket line.

The dead line in De Long's department was June 28. De Long went to the employment office on June 30. Rose checked his number and said, "I don't believe there is anything here for you now . . . We will call you when we need you." De Long inquired how soon that would be. Rose replied, "I don't know, come back New Year's."

On July 3 De Long spoke to Campbell, the general foreman of the department. Campbell told him that he had a clear record at the electric weld and he liked his work but he did not know how he could get back. He suggested that

he see Roy Case, the superintendent. De Long testified that in the course of his conversation with Case on July 5, Campbell came running from the other side of the office and said, "Roy, do you know who this boy is? . . . His name is Tony De Long." The expression on Case's face suddenly changed and he told De Long the work in the mill was slack, that there was nothing for him. De Long remarked, "Well, I can see that I am not wanted around here." Case replied, "Oh, yes, you are wanted around here. The men can use you. You are a good worker, and all that. The only thing you have to do is to keep walking to the employment office."

De Long repeatedly went to the employment office, but the police prevented him from seeing Rose. The police were stationed in front of the building. One of them had lists of numbers and names. Employees whose numbers appeared on the lists were permitted to see Rose. The others were told to come back the next day. Discouraged with his fruitless attempts at the employment office, De Long finally succeeded in contacting Campbell again. De Long said he wanted to be taken off the "merry-go-round" and to be told if he had any chances of returning to work. In one breath, Campbell said, "No, you are not fired," and in the next, ". . . You have to keep . . . walking down to the employment office. You have to be rehired."

Shortly thereafter De Long spoke with McCoy who told him, "You will have to wait until the case is over with the National Labor Board before you can go back to work."

We find that De Long was refused reinstatement because of his connection with the union and his assistance to the union during the strike.

D. Warren

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Warren

District of the respondent, comprising the Warren, Niles, and Trumbull Cliffs plants, was adopted in June 1933 and amended in May 1934. Shortly after the constitutionality of the Act was upheld, the Employees' Independent Association, herein called the Association, was formed. It purported to be a new organization and independent of the respondent. The activities of the Association will be discussed hereafter.

The similarity of the Warren Plan to the Plan at Massillon, Canton, and Youngstown renders it unnecessary to describe it fully. It is sufficient to indicate certain circumstances and incidents reflecting its domination by the respondent.

The Plan was initiated and sponsored by the respondent. Its adoption was never submitted to a vote of the employees. Ernest Webb, one of the Employee Representatives, testified that he was first apprised of the Plan at a meeting in June 1933 held in the office of the superintendent of the hot mill. Elliott, who was then district manager of Warren, explained the purpose of the Plan. The respondent bore the expenses of all the meetings and elections, both of which took place on company time and property, and of the entire functioning of the Plan. The representatives were paid their regular salaries for all time devoted to the Plan. Ed Mulligan, the chairman of the General Body of Employee Representatives, devoted most of his time to Plan work and was assigned an office for such work.

The record indicates that the elections themselves were not always free of management influence. Webb testified that prior to the election of the Chairman of the General Body in 1934, Mulligan, who was a candidate for the office, said to him, "Well, using some of the superintendents to

probably bring a little pressure and a little politics, why we will make out all right."

The experience of Webb as chairman of Joint Committee No. 2, in charge of wages, employment, schedules and working conditions, is significant. Out of 17 requests for wage increases which were presented to the Committee during a period of 3 years, the employees won two and lost 15. The cases were lost as a result of a tie vote between the Employee Representatives and the Company Representatives both in Joint Committee No. 2 and in the Appeals Committee.

From the evidence as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation, Warren District, and has contributed financial and other support to it.

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2. *Events preceding the strike*

The circumstances surrounding the discharge of Richard John Green, a breaker operator in the hot strip finishing department, serve to illustrate the activities of the respondent prior to May 1937 when the anti-union drive reached its height.

Green joined the C. I. O. on March 2, 1937. On March 6 Paige, his foreman, summoned him to his office. As the office was occupied, Green was taken to the mechanic's shed where he was alone with the foreman. Green testified as follows:

> "He said: 'I called you in here, I want to ask you something. I want you to tell me the truth.' I said: 'I always have told you the truth, Ralph.' He said: 'I know that, that's why I called you in here.' He said: 'I hear your buddy, Jim Airwyke, is signing

up members in the C. I. O.' I said: 'Yes, as a matter of fact, he signed me up.'

"He said: 'What did you want to do that for?' I said: 'We men around here are not satisfied with the Company Union Plan. As it is,' I said, 'we have no representation at all.'

"And he said: 'You have been long enough to know this Company's policy towards outside unions.' He said: 'You take my warning and get out of it, and everything will be O. K.' He said: 'I like you, and I don't want to see anything happen to you.' "

Paige further questioned Green regarding his attendance of C. I. O. meetings and admonished him "to stay away from them."

On March 21 Green was called to the office of Minahan, the superintendent. Minahan showed Green certain defective steel handled by him and said, "I am going to have to lay you off, and seeing that you have been laid off twice before, I will have to let you go." Green explained that the steel turned out "wavy" because the rolls were worn in the machine, and that the foreman was aware of it but said it did not "hurt anything." Green also explained to Minahan the reasons for his previous lay-offs.[52] Minahan said, "I could give you another chance, but you have been talking too much about the union, around here, . . . if you had been any ordinary sweeper, there would have been some excuse for you, but you are more intelligent and

52. Green testified that his first lay-off was due to the "scratching" of some steel for which another operator was responsible, and that he submitted to a lay-off for 3 days rather than cause any trouble. The second lay-off occurred in March 1936. On that occasion Green and several other operators were instructed by the foreman to shovel coke because there was no immediate work on the breakers. Upon the refusal of the men to do so, the foreman sent them home and told them to stay home until he called for them. However, when the men explained the facts to Minahan a few days thereafter, he said that they would have lost no time if he had been informed about the incident immediately.

should have known better . . . As far as I am concerned, I am through with you."

Shortly thereafter, Green requested Glenn Dugan, an Employee Representative, to take action in his behalf. Dugan was doubtful as to the possibility of Green's reinstatement, since he had been attending C. I. O. meetings. A week later Dugan informed Green that Minahan even refused to discuss his case. According to Green's testimony, Dugan also said that "he could not understand the Company's policy in putting statements in the paper that any man was free to join any union of his own choice and then when he did so, then they fired him for it."

Unable to obtain any results through the Plan, Green communicated with Mayo, the C. I. O. Regional Director. Mayo secured the services of the Committee of Trumbull Lodge No. 73 and a meeting was arranged with officials of the respondent. The latter refused to give a definite answer.

About April 24 an officer of the respondent, McClain, told the vice president of Trumbull Lodge that although he did not make any promises, he might consider reinstating Green but not James Airwyke or Arthur Scott, who were also discharged. On the same day the men decided to submit their case for determination by the Board. Several days later McClain called Green to his office to have "a man to man" talk with him. He said, "I hate to see a young fellow like you get off on the wrong foot with the wrong crowd," and asked him whether he wanted to return to work. Green was willing to return provided he was given back pay. Minahan said, "I will take you to the Labor Board and back four times before I give you your back pay." About May 3 or 4, Green decided to return to work without the back pay. He was asked to promise, however, not to talk about the union any more. Paige also told

him that if he had heeded his warning he "would have never gotten into this trouble."[53]

Shortly after the constitutionality of the Act was upheld, the Employees' Independent Association was formed. Leaflets concerning the Association and membership cards were prepared for distribution. The leaflets were addressed to the employees of the Warren District and were signed by the members of a Committee, styled the "Reorganizing Committee for the Employees Independent Association."[54] Ed Mulligan, Chairman of the General Body under the Plan, was also chairman of this Committee. The leaflet indicates that the Association was intended to function pursuant to the provisions of the Plan as revised in March 1937. Presumably the reference is to the revision of the Plan adopted April 22, 1937, which has been described above.

An intensive Association membership drive began in May, and was conducted with the active support and assistance of the respondent's supervisory employees.

On about May 1, Mulligan undertook to mail a great number of leaflets and membership cards to employees. He performed this work in his office in the respondent's hos-

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53. Green worked until the strike. During the strike Green was refused reinstatement. See *infra*.

54. The leaflet reads in part as follows:

"In order that this plan can function in compliance with the various sections of the National Labor Relations Act (otherwise known as the Wagner Act), as regards rates of pay, wages, hours of employment or other conditions of employment, the plan was amended in March 1937 by the duly elected employee representatives.

"Paragraph 2, Section VIII, of the Wagner Act, recently held constitutional by the Supreme Court, provides, however, that an employer cannot contribute financial or other support to any labor organization. It is therefore necessary to secure financial support in order that our revised plan of collective bargaining can continue.

"If it is your desire to continue collective bargaining through a group of employee representatives chosen from among Republic employees, this can be accomplished by accepting membership in the EMPLOYES INDEPENDENT ASSOCIATION at a cost of Four Dollars ($4.00) per year . . . "

pital building. Eddie Werner, assistant to the employment manager, helped Mulligan by folding the leaflets and cards, placing them in envelopes, and sealing them. Mulligan told Webb, an Employee Representative, that he had to mail about 5600 leaflets and cards and believed he could obtain the necessary money from the Athletic fund. This fund, which was under the supervision of a Plan committee, consisted of gate receipts of various sport events held on the respondent's ball grounds and of the rentals charged outside parties for the use of such grounds.

The membership campaign was not altogether successful. The employees were reluctant to sign the cards. On about May 12 McKinney, a superintendent, asked Webb why none of his men signed Association membership cards. Webb testified:

> "I said: 'How do you know?' 'Why,' he said, 'Mulligan told me.' I said: 'What business did he have telling you?' I said: 'This is supposed to be a secret order.' 'Well' he says, 'You will have to go out and talk to them, talk to these men.' He said: 'You are a free lance, you get around all over the plant.' "

Webb refused to comply with McKinney's request, saying, "You know that the Wagner Bill has been passed." McKinney suggested that Webb consult Mulligan about it. Mulligan was absent from his office at that time. While Webb was waiting, Frank Neale, assistant to the master mechanic, entered and examined the membership cards in Mulligan's files. Shortly thereafter, Lowry, the master mechanic's chief clerk, came in with a handful of membership cards and deposited them with the other cards. Several days before the strike, McKinney again complained that he was in a "tough spot" because the men under his supervision had not returned the membership cards.

A number of foremen were themselves directly engaged in soliciting members for the Association during working

hours and on the respondent's time. Thus about May 12, Michel, the general labor foreman, asked Eli Parkovich, a foreman in the labor department, whether he joined the "company union," and told him that " . . . everybody wants to work, got to join the company union." He then instructed him to take down the names and numbers of the men in his gang who refused to sign membership cards.

About May 14 Taylor, the foreman of the blast furnace, approached Ernest Garnett, an operator of a "lorry" car in the stock house, and inquired why he failed to return the Association card which had previously been mailed to him. Garnett replied that he already belonged to the C. I. O. Taylor then said, "If you know what is good for you, you will sign that." On the same and subsequent days, Kerwin, the superintendent of the blast furnace, engaged Garnett in conversation regarding the C. I. O.

William M. Cain, a roll turner, testified that about May 15, Baldwin, the foreman of the roll turner department, approached him while he was working and asked him what he thought about the "company union." When Cain expressed his opinion, Baldwin said, "I don't give a damn what you think of the company union, that don't interest me at all. I am on the spot. The roll turners at the Niles plant have signed up 100 per cent for the company union. The roll turners at the strip plant, fifty per cent of them have signed for the company union. I have eight men here, not one man has signed for me, and I am on the spot, and I think you fellows owe it to me to sign that card." Baldwin then told him not to worry about the dues because "the company will take care of that."

George Carter, a locomotive engineer, testified that a few days before the strike, Miller his foreman, asked him and another engineer whether they received a letter with a white card. Carter argued that it would be useless to pay

$4.00 a year to join an organization that was of no benefit to him. Miller told him to forget the $4.00 and explained that there was nothing on the membership card regarding the payment of dues. When Carter refused to sign the card, Miller launched into an attack on the C. I. O., saying that it consisted of a "bunch of communists and bolsheviks."

On the basis of all the evidence we find that the respondent dominated and interfered with the Employees' Independent Association, Warren District, and contributed support to it.

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3. *The strike*

The strike began at Warren on the night of May 26. Various preparations were made to meet it on that day. Richard Green testified that at the end of his shift on that night he joined the "hot mill" men who were on their way to the strip mill in order to urge the strip mill employees to join the strike. However, on the track between the strip mill and the sheet and tin department there were lined up a couple of hundred "loyal" workers and "bosses" armed with sledge hammers, pikes, and other weapons. As the hot mill men were going through the sheet and tin department, Ginert, the superintendent, yelled at them, "Come on, you sons-of-bitches, we are waiting for you." Not desiring to create any trouble, the men decided to leave the mill.

As the employees in the cold strip shipping department were ready to leave at 11 o'clock, Bill Thompson, the "boss" of the department, said, "You have to stay here to protect your jobs . . . If you go home, you won't have any more jobs in this department." John Riffle and Albert Lewis, impelled by the fear of losing their job, remained in the plant. They slept on the floor. Next morning they

were given an order for the restaurant. The only supply of food in the restaurant consisted of hamburger sandwiches and coffee. In view of the number of people who had to be served, the hamburger was not properly fried and both Lewis and Riffle became ill. They went home the same day.

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4. *The refusal to reinstate Green and Hite*

About June 25 or 26 employees began to return to work. Richard Green and Hallie Philip Hite, it is alleged in the complaint, were refused reinstatement because of their union affiliation.

Richard Green. Green was actively engaged during the strike in transporting strikers from the S. W. O. C. headquarters to the plant for picketing duty. On June 25 or 26 he went to the Warner Hotel where, he had been informed, passes were distributed enabling employees to get through the National Guard lines and enter the plant. In the lobby Green met McClain, who laughed at him and motioned to him to get out. Upon further inquiry, he was directed to the mezzanine floor where Mulligan was seated at a little table and had several lists in front of him. He informed Green that his name was on the ineligible list and refused to give him a pass. Green testified that there were two others present, St. Clair and Blanchard Bolton. Bolton explained to Mulligan that he was on vacation when the strike commenced, and was thereupon issued a pass. St. Clair was unsuccessful.

Prior to the strike, Green earned about $9.50 a day. Since the strike he was employed for one day as a deputy sheriff and 2 weeks as an electric welder at the American Welding Company. His check for the first week was $26.41.

We find that Green was refused reinstatement because of his connection with the Union and his assistance to the Union during the strike.

Hallie Philip Hite had been in the employ of the respondent since September 1923. Prior to the strike he was a yard conductor and "dumper" at the Trumbull Cliffs Plant, and earned $1.04 an hour with time and a half for working over 40 hours a week. Hite joined the C. I. O. on May 27 and served on the picket line.

Shortly before the strike, M. R. Martin, the traffic manager, and Kilcanney, the foreman, asked him to sign an Association membership card. Hite refused.

On about June 25 or 26 Hite was informed by Lavelle, one of the respondent's engineers, that the men were returning to work. The same day Hite saw Kilcanney and inquired about his job. Kilcanney said, " . . . if you go back to work, you have got to go back as a new man, rehire, that is, if they want to take you." Hite replied that he would never return as a new man after 14 years in the respondent's service. Hite made no further attempts to secure a job. According to his testimony, it would have been useless, since Kilcanney told him he had "the inside dope."

Hite has not earned any money since the strike.

We find that Hite was refused reinstatement because of his connection with the Union and his activity in the strike.

E. Cleveland

1. *The Plan of Employee Representation*

The Plan of Employee Representation in the Cleveland District was a continuation of the Plan which had been established in the Corrigan, McKinney Steel Company in

1933.[55] In March 1937 the bylaws were amended, apparently pursuant to the revision proposed at the Cleveland conferences of the Central Council of Employee Representatives. This revision, as already pointed out, contained minor changes only and in no way removed the respondent's control over the Plan. Shortly after the constitutionality of the Act was upheld by the Supreme Court, Wakefield, the Management Representative, announced at a meeting of the General Committee of the Employee Representatives [56] that the respondent would no longer be able to contribute any financial support to the Plan. Thereupon the Employee Representatives formed the Employees' Representative Association, a new organization which purported to be independent of the respondent. The formation and activities of the Association are further discussed hereafter.

The Plan in the Cleveland District up until April 12, 1937, was similar in structure and operation to the Plan in Massillon and the other districts. It is therefore unnecessary to describe at length. It is sufficient to state that the employees were never given an opportunity to vote on the adoption of the Plan; that the respondent defrayed the expenses of all the meetings and elections, both of which were held on the respondent's time and property, of clerical and stenographic services, printing, and of the entire functioning of the Plan; and that the representatives were compensated by the respondent for all time spent in connection with the Plan whether during working hours or outside of working hours.[57]

55. The assets and properties of the Corrigan, McKinney Steel Company were acquired by the respondent in September 1935. In April 1936 the name of the Corrigan, McKinney Steel Company, appearing in the bylaws of the Plan, was replaced by "Republic Steel Corporation, Cleveland District."

56. The General Committee as set up in the bylaws of the Cleveland Plan corresponds to the "General Body" in the other districts, and is, in fact, referred to by witnesses as the "General Body."

57. The following incident serves as an illustration of the operation of the Plan: John Exall, a chipper at the Corrigan, McKinney plant, testified

We find that the respondent dominated and interfered with the formation and administration of the Plan of Employee Representation at its Cleveland District.

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2. *Events preceding the strike*

The campaign to organize the respondent's employees in Cleveland began in June 1936. At that time, there not being any Lodge set up for the respondent's Cleveland employees, they began to join the Otis Steel Lodge.[58] The men were at first compelled to hold their meetings secretly.

As has already been stated, the respondent met the announcement of the campaign for the unionization of steel workers by its statement of July 2, 1936. Immediately thereafter it began a campaign to discourage and thwart organization.

(*a*) *The discharges*

Almost from the very first the respondent resorted to the weapon of discharges. We will take up in order those individuals named in the complaint as having been discriminated against for union activity. The respondent introduced no evidence to rebut testimony that the discharge of these men constituted unfair labor practices.

Thomas Cikah. Cikah commenced to work at the Corrigan, McKinney plant in 1925. Prior to his discharge he was employed as a locomotive engineer in the coke plant.

Cikah testified that during July and subsequent months company police watched the beer parlor operated

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that in the 1936 elections for Representatives he was defeated by five or six votes. He subsequently learned that Peters, the superintendent of the department, urged the employees not to vote for him, saying, "Don't vote for this man. He is a radical. He is a Communist. Even if he get elected, we going to fire him." To one employee who praised Exall as being a "good man" Peters said, "If you think he is a good man, then you are a Communist yourself."

58. The Otis Steel Lodge had been established by the Amalgamated for the employees of the Otis Steel Company.

by his wife near the plant, which was frequented by Balint, a C. I. O. organizer, and others connected with the C. I. O. Cikah joined the Union on July 2, 1936. Shortly thereafter Wall, the superintendent, summoned him to his office and inquired whether he belonged to any union. When Cikah replied that he did not, Wall advised him: "For . . . sake, don't join a union. They are no good. They don't give you anything."

Cikah was discharged on July 9, 1936. His foreman told him he was discharged because of his failure to stop the smoke and put out fires in the ovens under his supervision. Cikah testified, however, that he was not at fault in this regard and explained that while he was running the locomotive he could not do anything else. He also testified that there had previously been no complaints concerning his work. Furthermore, when he was reinstated shortly before the strike, he was assigned to his old position. This reinstatement took place on May 14, 1937, after Cikah had filed a charge with the Board.

At the time of his discharge Cikah was earning 59½ cents an hour. Since then the rates for locomotive engineers have been raised to 74 cents an hour. He did not earn any money between the date of his discharge and reinstatement.

On the basis of the whole record we find that Cikah was discharged because of his membership and activity in the Union.

John Popik. With the exception of a lay-off of five or six months, Popik worked as a rigger at the Corrigan, McKinney plant continuously from February 6, 1934, until his discharge on August 10, 1936.

Popik joined the C. I. O. on about August 3, 1936. On August 9 he was directed to report to the office of Agnew,

the master mechanic, who questioned him regarding his membership in the C. I. O., and remarked, "Don't you know that this plant (is) never going to be organized? . . . this company got a lot of money and (is) going to break any Union in the world." On the following day Agnew again summoned Popik and said, "I got news for you . . . I got to let you go. That is the news." Shortly thereafter Popik saw Krause, the employment manager, and inquired whether his C. I. O. membership was the reason for his lay-off. In reply Krause put his fingers to his lips and said, "Sh-h-h."

After his discharge Popik filed a charge with the Board. On May 8, 1937, he received a card from the respondent directing him to report to the main office. Krause then reinstated him to his former position as a rigger.

At the time of his discharge, Popik was earning 55 cents an hour plus a tonnage bonus. Since then the hourly rate for riggers has been increased to 72 and 75 cents. Between the date of his discharge and reinstatement, Popik earned $50 or $75 hauling coal in his own truck.

Upon the entire record in the case, we find that Popik was discharged because of his membership in the Union.

Frank Pirichy. Pirichy worked for the respondent off and on from May 1934 until his discharge in the latter part of August. For about six or seven weeks prior to his discharge he was employed as a chipper in the chipping department. Pirichy joined the C. I. O. on July 1 or 2, 1936, and did considerable organization work among the respondent's employees. He testified that he succeeded in organizing about 100 men in the chipping department.

Late in August, when Pirichy reported to work on his shift, he was unable to find his time card on the rack. Upon inquiry, it turned out that the company policeman in at-

tendance was in possession of Pirichy's card together with five or six others. Pursuant to the policeman's suggestion, Pirichy contacted Krause the following morning. Krause informed him that he had received orders from George Belline,[59] the superintendent of the chipping department, to dismiss him. Krause was unable to give him any further explanation, and stated, "according to my record, you perfectly O. K. . . . I have no complaint against you. I don't know what it is all about."

Pirichy testified that the words "no work" were written on the discharge slip handed to him. Nevertheless, about 15 or 20 new men were hired in his department during the same week. Again, when Pirichy returned to the employment office about two weeks later, he witnessed the hiring of additional men. His own request for employment, however, was repeatedly turned down with the reply, "We have nothing for you."

Pirichy filed a charge with the Board about a week after his discharge. On May 11 he was reinstated to his former position and worked until the strike. At the time of his discharge he was earning 60 or 62 cents an hour. The rates for chippers have since that time been raised to 72 cents an hour. After his discharge Pirichy was employed by the W. P. A. for a period of four and a half months and earned $71 a month.

On the basis of all the evidence we find that Pirichy was discharged because of his union membership and activity.

George Troyanovich. Troyanovich began to work at the Corrigan, McKinney plant on September 3, 1925. At the time of his discharge on August 27, 1936, he was employed as a bed chain man.

59. Also referred to as George Bellew and George Balleau.

Troyanovich became a member of Otis Steel Lodge in the latter part of June. On July 24 he met two organizers from the Otis Steel Company, Casey and Murphy, who invited him in their car which was parked on Broadway and engaged him in conversation. The conversation centered about the circumstance that the respondent's employees were being "called in" and questioned by their bosses and by Jones, the captain of the company police. Casey and Murphy expressed the belief that Lohman, an Employee Representative in the coke department, was furnishing the respondent with information. Upon leaving the two men, Troyanovich encountered Sam Naletrich, a loaderman in the coke department, who repeated that men were being called in. Naletrich then warned him, "Watch yourself, here comes the company stool." Troyanovich looked around, and saw a man coming slowly down the street. Naletrich remarked, "That fellow hangs around the beer joint all the time . . . he turns in fellows that sign up." Troyanovich then went to the office where he received his vacation money. On his way out, he noticed that the man who had been pointed out to him by Naletrich was talking to a company policeman.

On the same day Troyanovich was ordered to report to the main office where Wakefield, the Management Representative, and Captain Jones questioned him concerning his conversation with the two men on Broadway. Believing that a denial would be futile, Troyanovich admitted that they were two organizers from the Otis Steel Company. Captain Jones thereupon launched into an attack against the C. I. O. and accused John Lewis of being a racketeer and "out to make money for himself." He admonished Troyanovich to stay away from the two Otis Steel men if he knew what was good for him. When Troyanovich stated that he was "neutral" on the union question, Wakefield asserted that it is impossible to be neutral and that one must

be either for or against the company. Troyanovich was then urged to influence the men in favor of the Plan and against the C. I. O.

Troyanovich left on his vacation the same afternoon. When he returned his house was watched by men who arrived in a car and parked on the other side of the street. Upon his leaving the house, the car also disappeared.

Two or three days after he returned from his vacation Troyanovich was summoned to the office of Zimmerman, the superintendent of the order and shipping department. Shriber, assistant to the district manager, talked to him. Troyanovich testified:

> "Well, he first said that he was very much disappointed in me, and I wanted to know just what he meant. He didn't get to the point. And then he said, 'You know . . . they are going to start organizing this union down here . . . there is going to be a lot of trouble . . . We have had intentions of putting in a new mill here in Cleveland . . . if this threat of the union drive is going to go through, we might change our minds and not put the mill in here . . . you know there is going to be some good jobs when that mill goes up . . . you look like a pretty intelligent fellow . . . if you work with us why . . . we will see that you will get a good job.'
>
> And he further stated . . . 'You know, the Republic Steel has the reputation of being very good to its friends, and damned ruthless to its enemies . . . ' "

The same day Balint, the C. I. O. organizer, told Troyanovich that he was slated to be discharged. He explained that Lohman had signed an affidavit confessing that he was compensated by the respondent for furnishing information regarding employees who had joined the C. I. O.

When Troyanovich reported for work on August 27, Robbins, the chief chipper, stopped him and stated that his work had been unsatisfactory. He refused to explain any further. He said, "Charlie Barrie has got the proof," and added, "You have been a bad influence around here in the past two months."

Thereafter Troyanovich requested the Employee Representatives to take action in his behalf. An interview with Wakefield proved fruitless. He stated that they had enough to "hang" Troyanovich and would never rehire him. The Employee Representatives then appointed a committee to see Barrie and ascertain the facts relative to the discharge of Troyanovich. Barrie informed the committee that about two months before he had been instructed by his "superiors" to watch Troyanovich, that he had on numerous occasions observed him conversing with a group of five or six men, and that he turned him in because he was "suspecting that the man was talking about the Union and about Communism."

The matter was then submitted to the General Committee at a meeting held on September 8, 1936, and a motion was unanimously adopted recommending the reinstatement of Troyanovich. John Exall, an Employee Representative, testified that about a week after the meeting Carpenter called him into his office, upbraided him for "raising hell" about Troyanovich, and stated that he was a Communist and would never be taken back.

At the time of his discharge Troyanovich averaged over $5 a day and worked six or seven days a week. On September 30, 1936, he secured employment elsewhere at loading coal and worked for three months, earning $26.30 weekly. Since the first of April his earnings averaged only between $5 and $10 a week.

Upon all the evidence in this case, we find that Troy-

anovich was discharged because of his membership in the Union.

Michael Naletrich. Naletrich worked at the Corrigan, McKinney plant continuously from 1917 until his discharge on September 9, 1936. At the time of his discharge he was employed as a loaderman in the coke department. He testified that he had never been laid off and that his work had at all times been satisfactory.

Naletrich joined the C. I. O. in July 1936, and was active in organizing employees. In the middle of August he took 10 employees to Cikah's beer parlor where they were signed up by Fred Korecky, a speed car operator at the Corrigan, McKinney plant, and recording secretary of Lodge 1098, an S. W. O. C. Lodge. Naletrich testified that he was watched by men from the respondent's office as he entered the beer parlor with the employees. On about September 6 he was directed to report to the superintendent of the coke plant, Wall, who glanced at a slip of paper in his hand and inquired whether Naletrich had joined the C. I. O. Naletrich denied his membership. Wall warned him, "Better don't join." After this conversation Naletrich was closely watched by his foreman.

On September 9 Naletrich was discharged. By way of explanation his foreman told him that he had made a "big mistake" a month ago when he had pushed the coke before the whistle blew. Naletrich testified that he had already been penalized for his mistake by a one-day lay-off, and that others had committed the same error but were never discharged as a result. After his discharge he repeatedly tried to get his job back but was unsuccessful.

Naletrich filed a charge with the Board in March 1937. On May 6 he received a card from the respondent asking him to return to work. For 3 days he was assigned to

loading doors and then he was reinstated to his former position.

At the time of his discharge Naletrich was working at the rate of 59 cents an hour. For the first 3 days after his return to work he earned 57 cents an hour and thereafter 74 cents, which constituted the new rate for his former job.

Upon all the evidence we find that Naletrich was discharged because of his membership and activities in the Union.

Fred Korecky. Korecky worked at the Corrigan, McKinney plant more or less regularly from 1930 until his discharge on December 19, 1936. During the first two and a half years he was a pump operator. Then he was employed as a speed or service car helper and was finally promoted to the position of service car operator. He testified that as far as he knew his work had always been satisfactory.

Korecky joined Lodge 1098 on July 26, 1936, and was elected recording secretary a month later. He was active in organization work among the employees. As already noted, in the middle of August he signed up the employees brought into Cikah's beer parlor by Naletrich. During the month of November Korecky was on different occasions questioned by Wakefield, the Management Representative, and Tull, the electrical superintendent, regarding his C. I. O. membership. Korecky denied that he had joined the C. I. O. He testified that after these conversations took place, his house was watched by a man, whom he recognized as a sergeant or lieutenant in the company police and whom he had previously seen in the mill.

On December 19 Korecky was laid off. In accordance with the suggestion of Homer Kerr, the turn foreman, he reported the following morning to the employment office

where he saw six laborers being hired. Korecky implored Krause to give him anything at all, even a laborer's job. Krause's reply was, "No." Korecky insisted, "Why you just hired six men out there. I seen them come in here and I seen you signing them up now." Krause said, "Oh, never mind."

Although it is not entirely clear, Korecky's testimony on cross-examination indicates that the occasion for Korecky's lay-off was furnished by the elimination at that time of gasoline locomotives from the equipment used in the service car work and the substitution of gasoline trucks. The service car gang consisted of Korecky and seven other men who had all joined the C. I. O. and were laid off at the same time. Korecky testified that all these men were subsequently taken back although he did not know on what dates. Korecky further testified that he was sixth in seniority in the service car gang but had greater seniority in the electrical department.

Korecky's case was discussed at a meeting of the General Committee of Employee Representatives on January 5, 1937. Korecky, who was called in to explain the facts of his case, stated that he had seniority rights in the electrical department where men were being hired on the pumps and on the construction gang. He was later informed by John Exall, one of the Representatives, that the General Committee recommended his reinstatement by unanimous vote. However, no further action was taken in the matter.

Korecky filed a charge with the Board in January. On May 18 or 19 Krause offered him a laborer's job. Korecky did not report to work, since he was occupied with some business matters for a few days, and then he heard that a strike was to be called.

On the basis of all the surrounding circumstances it must be concluded that Korecky was discharged and refused

reinstatement until shortly before the strike because of his affiliation with the C. I. O. There is no evidence that the other men on his gang who had been taken back engaged in any organization work other than joining the C. I. O. Korecky, however, distinguished himself by securing the signatures of other employees. It may be that Korecky's position was in fact eliminated. He was, however, willing and anxious to accept any work for which he was qualified. Such work was denied to him although other men were being hired.

At the time of his discharge Korecky was earning 62 cents an hour and worked alternately 40 and 48 hours a week. He was paid time and a half for working over 40 hours a week. Between the date of his discharge and recall he earned about $370.

John Exall. Exall was employed as a chipper in the Corrigan, McKinney plant from the spring of 1933 until his discharge on January 14, 1937. He joined the C. I. O. on July 2, 1936, and held the position of treasurer in Lodge 1098. It will be recalled that Exall, in his capacity as alternate Representative, endeavored to bring about the reinstatement of George Troyanovich who was discharged on August 27. On September 14 Carpenter summoned Exall to his office and said to him, "Exall, do you care to work any longer for us? . . . What the God-damn Hell are you raising hell about George Troyanovich? We fired him and when we fire him we never take him back, either. You know, he was a Communist." Carpenter then questioned Exall about his children and their education and suggested, " . . . suppose there is a chance for you to become a chipper foreman." Exall replied, "Mr. Carpenter, as long as I represent here, I decline the proposition. If the company thinks that I am good enough to become a chipper foreman, when my turn is over, I will think it over." Exall testified:

> " . . . he got sore a little bit on account of my answer, and he says, 'You don't fool anybody,' he says, 'we know you. We know all about you, and we got the goods on you, too . . . ' I says, 'Any proof you got on me, lay your proof on the table and I will admit my mistake,' but he says, 'Go on now,' he says, 'Next time I call you here I am going to have the proof.' "

Late in October Wakefield requested Exall to urge all the employees in the chipping department to stay away from the C. I. O. Wakefield offered to permit him to work in the daytime, so that it would be possible for him to see the men on the different shifts; to recompense him for time spent outside of working hours in visiting the men at their homes; and to assist him in educating his children. Exall declined to accept these propositions.

At about the same time Exall attended a C. I. O. meeting held at the house of Manuel Garcia, an employee of the respondent. On the day following the meeting, John May, the Plan Chairman, visited Exall at his home. May explained that he was sent by Wakefield and instructed to speak to him like a father. He said they knew where Exall had been the previous day and he mentioned Garcia's name and the number of his house. He finally said, "Mr. Wakefield send me over here . . . to tell you to watch your step."

Upon his return to work thereafter Wakefield asked him whether May spoke to him and what he thought about it. Exall testified:

> "I told him Mr. Wakefield I think I got a right to go any place I want. What I am doing is my own affairs. He said, 'Yes, but it don't look good in the part of the Company. You cannot work both ways. If you want to work with C. I. O., resign your position here.'

I said, 'Why should I resign my position?' He said, 'You cannot work both ways . . . You don't give the co-operation.' I said, 'If I don't give you satisfaction, co-operation, why don't you fire me?' He said, 'Don't worry, if you don't watch your step, you going to get fired.' "

Sometime in November Exall was laid off for a week under the following circumstances: An invitation had been extended to the Employee Representatives to attend a meeting in Youngstown of the "Employee Representatives of Ohio." At a meeting of the General Committee Wakefield announced that although they had no right to represent the respondent's employees at the Youngstown meeting, any Representative could attend as an individual if he so desired. Exall consequently made the trip. When he returned, George Belline, the superintendent of the chipping department, laid him off for a week for absenting himself from work without the foreman's permission. Exall protested that he had on other occasions taken time off without permission and was never reprimanded. He complained to Wakefield and requested that a special meeting of the General Committee be called to consider the question. Wakefield replied, "Nothing doing." He made the same request upon May, the Chairman of the General Committee, who told him that if Wakefield was opposed to a meeting, nothing could be done about it.

On about January 5 Exall was ordered to report to Wakefield's office. Captain Jones, who was present, read certain names from a list containing about 300 names and check numbers and asked whether Exall recognized them. Exall testified:

"I said, 'Yes; most of them . . . Why?' He said, 'You done the dirty work.' I said, 'What do you mean, Mr. Jones?' He said, 'You signed up these men in the

> Union . . . ' I told them it was a lie and he turned around and he said, 'Not only that but during [sic] the payroll C. I. O., you are getting $6 a day,' and I told him that was another lie. And he turned around and said, 'Well, we expect you to say that but you cannot fool me. I am watching you day and night.' Then . . . I said, 'What business have you got to watch me what I am doing outside of the plant?' He said, 'That is my job. I am getting paid for it . . . as long as you want to work for them at $6 a day, why don't you talk to Mr. Wakefield? . . . we pay you $6 a day.'
>
> And I says, 'What . . . are you trying to do, make a stool pigeon out of me? . . . ' 'Well,' he says, 'You can't work for both sides, for Republic Steel and for C. I. O. . . . if you don't want to play ball with us . . . you won't stay long.'
>
> I says, 'O. K. . . . If I don't give satisfaction, . . . they can fire me.'
>
> He says, 'Don't worry . . . they are going to fire you if you don't play ball with us.' ''

Jones then handed Exall a notebook containing a list of numbers headed by Exall's name and number and said that it belonged to Balint. Balint subsequently denied ever having seen the notebook. When Exall mentioned this to Wakefield, he said that Balint was double-crossing him.

At about that time lockers of employees in several departments had been broken into, and a systematic search was made of the personal belongings of some employees. Exall testified that his own locker was broken into twice but nothing was removed. This matter apparently became so acute that it was discussed at a General Committee meeting. At the meeting Exall made a statement that they were looking for union cards, that he was a union man and proud of it, and that he wished they would let him alone.

On the night of January 13 a C. I. O. mass meeting was held at the Bohemian Hall. Exall testified that he was seen entering the hall by Captain Jones and other company police who were stationed outside.

Exall was discharged on January 14. He testified that at about 2 o'clock on that day he proceeded to the tool room to change his chisels. Jack Simon, who was in charge of the tool room, told him to continue to use the same chisels longer. About half an hour later George Belline called Exall aside and said, "The way you act, it seems to me you want the Company to hire a couple of more grinders for you." He accused him of doing nothing all day but changing chisels, and specified the inches of steel that he had chipped with the respective sets of chisels. Exall replied that he could not possibly have ascertained the number of inches of steel he chipped with a particular set of chisels because he had been working alone since 12 o'clock and there was nobody present to measure. Belline refused to argue further and finally said, "Well, we don't want you here." Exall testified that the chippers had been cautioned at a number of safety meetings to exchange chisels which were worn down. Exall also testified that he had never before been reprimanded for improper use of tools. Moreover, it is unlikely that the offense with which Exall was charged was of a serious nature, since chisels which are returned to the tool room are not discarded but merely sharpened and then assigned for further use.

About a month later Exall and five or six other employees who had been discharged attempted to interview Wakefield regarding their jobs. A policeman at the gate stopped them and asked them to wait. He went in to speak to Captain Jones, returned in a few seconds, and said, "Nothing doing . . . they don't want youse." The same day Exall phoned Wakefield and was told, "You have got your case

pending down at the Labor Board, we can't do nothing for you until the Labor Board makes decision."

On May 24 Wakefield offered Exall a labor job. When Exall suggested that he had seniority rights, Wakefield replied, "Oh, no, we want to hire you as a new man, forget about it." Exall was required to submit to a physical examination. He worked on May 26 and then went on strike.

At the time of his discharge Exall was working at the rate of 52 cents an hour. Since his discharge he was employed for about a month by the W. P. A. and earned approximately $60.00.

Upon the entire record we find that Exall was discharged because of his membership in the Union.

John Petak. Petak worked at the Corrigan, McKinney plant continuously from 1928 until his discharge on January 18, 1937. He was employed as a crane repairman in the bull gang.

Petak joined the C. I. O. on July 1 or 2, 1936. Two weeks thereafter Tull, the superintendent of the electrical department, said to him, "John, I have got your name and badge number here and I heard you joined outside union." He also told him that he had been informed of Balint's frequent visits to his house. After this conversation Petak was given considerably less work than the other men.

At about the same time his house was being watched by company police. On one occasion a company policeman followed him all the way from his home to the clock house in the plant and observed him as he punched his card. On January 13 Petak saw Captain Jones and the policeman who had previously followed him standing outside of the Bohemian Hall where a C. I. O. meeting was being held.

When Petak came to work on January 18 he found that his card had been removed from the rack, and that he had been laid off. Gene Perry, the boss in the electrical department, told him that the elimination of gasoline locomotives necessitated the lay-off of some men and that he was the youngest in the bull gang. When Petak remonstrated that there were four men on the gang with less seniority, Perry promised to secure for him a crane operator's job and to call him in a few days. He never called. About 3 weeks later Petak spoke to Krause. Krause told him to wait a minute. He returned after about an hour and a half and did not even want to talk to Petak. Petak made three other attempts and was met with the reply, "Nothing doing." Petak testified that in the meantime four men having less seniority had been taken off the speed car service and placed on the bull gang. He also testified that a janitor had been given a craneman's job and then placed on the bull gang.

Thereafter, Petak filed a charge with the Board. On May 18 he was offered a general labor job and worked until the commencement of the strike at the rate of 62 cents an hour. At the time of his lay-off he was earning 59 cents an hour. The rate for employees in the bull gang was ultimately increased to 74½ cents an hour. Petak had not earned any money from the date of his lay-off until his recall on May 18.

On the basis of the whole record we find that Petak was laid off because of his membership in the Union.

Mathew Babich. Babich first began to work at the Corrigan, McKinney plant in 1922. Shortly prior to the acquisition of the plant by the respondent in 1935, Babich was laid off because his position was eliminated. On May 6, 1936, he was given a job on the electrical repair gang and worked continuously until his lay-off on January 25, 1937.

Babich joined the C. I. O. on July 16, 1936. He testified that in August his locker had been broken into, and his union card had been removed. Everything else which he kept in the locker, including a little money, remained intact. On January 13 he went to the C. I. O. meeting at the Bohemian Hall which was kept under surveillance by company police.

On January 25 Gene Perry informed him that he had to lay him off because he was the youngest man in the gang. Babich protested that only three or four men in the electrical department had greater seniority, that he had held various positions, and was willing to accept any job available. Perry promised to put him on at the first opportunity. Subsequent attempts on Babich's part to secure a job proved unsuccessful.

Babich filed a charge with the Labor Board in April. On May 19 or 20 Krause offered him a labor job and he worked until the strike, earning 62½ cents an hour. Prior to his lay-off he was paid at the rate of 62½ cents an hour and was working from 40 to 48 hours a week. The wage rates for electricians have been raised since then.

Upon the whole record we find that Babich was laid off because of his union membership.

Wilbert Neuman. Neuman first began to work at the Corrigan, McKinney plant on July 21, 1933. At the time of his discharge on January 27, 1937, he was employed as a chipper.

Neuman joined the C. I. O. in September 1936. He attended the C. I. O. meeting held in the Bohemian Hall on January 13. Neuman testified that at the meeting he compared his C. I. O. membership card with that of another chipper. Next to him sat a man called Russel Lapka whose father, Neuman later learned, was a company policeman.

After the meeting, Neuman sprained his back and was temporarily assigned to light work such as oiling chipping hammers and other odd jobs. On one occasion, when he was in the tool room, Jake Simon, the foreman, said to him, "You know, if I were you I would never join the C. I. O., because Republic Steel has too much money behind it."

On January 26, as Neuman proceeded to the tool room to exchange chisels, he encountered Nicola Michich, a foreman, who warned him, "You better watch yourself, because George Balleau [Belline, the superintendent] has been watching you all day." The following day, Belline came over to Neuman with the four old chisels which he had presumably turned in the previous day, and ordered Edward Ray, another chipper, to test them. As Ray chipped the steel, Jake Simons measured the chips, and Belline made a note in his book. After Ray had thus tested all the chisels, Belline said to Neuman, "I am going to fire you . . . I have been watching you for the last two weeks . . . You have been doing nothing but monkeying around. You have been using too many chisels. You are fired." Neuman testified that he had been employed as a chipper for 3 months prior to his discharge and had never before been criticized for using too many chisels.

Neuman filed a charge with the Board in February. On May 11 he was reinstated to his former position. At the time of his discharge he was working at the rate of 62½ cents an hour and was averaging about $5 a day.

Upon the whole record we find that Neuman was discharged because of his membership in the Union.

Gaetano Armeli. Armeli first commenced to work at the Corrigan, McKinney plant on April 27, 1933, as a laborer. On November 12, 1936, he was promoted to the posi-

tion of chipper. This position he maintained until his discharge on February 20, 1937.

Armeli joined the C. I. O. early in January. About a month later he lost his key case containing the keys to his locker and his C. I. O. membership card. He reported the loss to the company police. In 4 or 5 days Belline informed him that Captain Jones had found his keys and would return them to him. Captain Jones opened the case and asked Armeli whether the keys belonged to him. Afraid of the possible consequences, Armeli attempted to deny any knowledge of the C. I. O. card and tore it in half. Captain Jones, however, recovered the card from him and said, "Hold on, don't throw it away. Give it to me. I am going to check up your handwriting."

On about February 26 Armeli's foreman told him, "I am sorry, Tom, you have to go to see George Bellew, [Belline] the superintendent." Armeli testified that Belline drew a slip of paper out of the desk and read him "a story of using too many chisels" about which he knew nothing. Armeli's entreaties to be given a "break" were ineffective and he was advised to see Krause. Krause merely confirmed the fact that he was discharged and handed him his slip which, according to Armeli's testimony, was marked "suspicious."

Shortly thereafter Armeli filed a charge with the Board. On May 18 or 19 Krause visited him and offered him a job in the labor gang, where he worked until the strike at 52½ cents an hour. At the time of his discharge he was earning 62½ cents an hour plus a tonnage bonus. The wage rate for chippers has since been increased to 72½ cents an hour.

On the basis of all the evidence we find that Armeli was

discharged by the respondent because of his union membership.

(*b*) *Other acts of intimidation*

The discriminatory discharges of these employees accompanied by the surveillance of C. I. O. meetings, spying on employees affiliated with the C. I. O., and the other practices referred to, are not the only manifestations of the respondent's active hostility to self-organization on the part of its employees. Numerous other incidents serve further to illustrate the respondent's activities.

In the middle of August a C. I. O. meeting for Negroes employed at the Corrigan, McKinney plant was scheduled to take place at the Globe theatre. The contemplated meeting, however, failed to materialize. One Negro who came to the theatre explained that the men were afraid to attend because Captain Jones was driving around in his car with about four other men.

The company police, under the leadership of Captain Jones, made repeated attempts by means of threats and violence to prevent the distribution of union literature in the vicinty of the respondent's plants. Thus when Benny Favorito, a volunteer S. W. O. C. organizer, was distributing literature at Independence gate, Captain Jones and Sergeant Russell threatened the employees with discharge if they accepted any handbills. On another occasion in December Captain Jones began to assemble a crowd to "tackle" the C. I. O. organizers who were distributing handbills in front of the gate. The organizers were compelled to leave.

On January 13, Balint, Vincent Favorito, and another organizer went to the plant of the Truscon Steel Company, a subsidiary of the respondent, to distribute announcements of the mass meeting at the Bohemian Hall scheduled for that night. As they took their positions near the gate, a

"great big fellow" wearing a blue lumber jacket came out of the gate and approached Balint. Believing that he was an employee, Balint handed him a leaflet. He took it with his left hand, whirled Balint around, said, "You dirty son-of-a-bitch, get the hell away from here," and hit him in the eye. Balint testified that the man had brass knuckles on his right hand. Walter Maloney, alias Walter Jergis of the company police, who was standing there, called them "further names" and said they received what they were looking for. As a result of the blow, Balint's eye became infected and had to be lanced. Balint subsequently saw the man who struck him dressed in uniform at the Truscon plant.

Benny Favorito testified that a number of C. I. O. men were distributing "Steel Labor" at the Truscon plant on January 25. One of the men who were massed around Captain Jones approached him and struck him in the face. Favorito retaliated. Thereupon a company policeman ran up to him, pulled out his gun, and said, "You son-of-a-bitch, if you don't cut it out I will put a slug in your back."

On April 19 Paul Castman was brutally beaten when he was distributing literature at the Truscon plant. Prior to a description of this incident it is material to set forth certain circumstances relative to Castman. He had procured a job at the Truscon plant on March 5, 1937. On April 5 his foreman told him that he had received orders to lay him off but gave no reason. Frank Dunch, a Representative, informed him that he was discharged for union activities. He was advised to speak with Captain Jones who questioned him about his former employment and his union activities. Castman testified:

> "He said, 'You are not working with Al Balint, are you?' I said, 'No, sir. I am not. I don't even know Al Balint.' He says, 'He is one of the Union

men . . . You ought to be working for the Union . . . One of the Presidents of the Union's Lodge is getting eight dollars a day from the C. I. O. . . . I am also paying him for his work down here.' "

He then asked him about the extent of the C. I. O. membership in the plant and again inquired whether he was associated with Balint. He warned him, ". . . if you are, it will be too God damn bad for you, if you are double-crossing me, look out."

Subsequently, Castman engaged in voluntary organization work. As already stated, on April 19 he was distributing literature near the gate of the Truscon plant to the men entering and leaving the plant. John Jense, an employee of the respondent, told Castman he would sign a C. I. O. membership card if he had one available. Castman gave him a card and Jense filled it out. Castman noticed, however, that he had not written in the date and proceeded to do so himself. A man whom he recognized as a company policeman pushed Jense out of the way and struck him with a black jack on the side of his face. Castman testified:

"When he hit me with the black jack, I stumbled backwards and fell in the gutter alongside of the sidewalk . . .

He jumped on me with his knees in the pit of my stomach, started beating me over the head and the arms and the hands with a black jack. He says, 'God damn you, here is some of Cap's Union. . .'

I had my hands over my head. I was trying to protect my head and he continued beating me with this black jack. Every time he would hit me he would say 'uh-uh . . .' "

As a result of the beating Castman suffered severe injuries and spent 16 days in the hospital.

William Sikorski, who had previously been employed at the Corrigan, McKinney plant, spoke to Krause in April 1937 regarding a job. Before he was put to work, however, he was subjected to an interview with Captain Jones who was called in by Krause. Krause pointed to Sikorski and said, "There is your man." Jones examined Sikorski's application card, commented on the number of his children, and stated that the respondent would see to it that he had work to support his family. He then inquired about the men he had formerly worked with in the 10 and 12 inch mill. Sikorski mentioned a few names. Jones remarked, "Yes, everyone of those boys are all on thin ice, I would not give you five cents for any one of their jobs . . . They are running around the mill, over there, and they are organizing the fellows into the CIO, and we are not going to stand for it." He said further, "Now, I want you to go over to work over there and I want you to keep your nose clean of the CIO because . . . we are never going to recognize them. Balint and Danitz, a couple of Communists, will never tell Republic Steel how they are going to run their corporation."

In addition to the foregoing activities, the respondent, in combating the growth of union sentiment among its employees, attempted to spread propaganda in favor of the Plan and against the C. I. O. Thus, at a Plan banquet staged in October by Wakefield, the Management Representative, Wakefield delivered a speech in which he extolled the Plan, stated that the principal task was to keep the C. I. O. out of the plant, and requested the assistance of the Employee Representatives in doing so. Likewise, petitions were circulated within the plant expressing faith in the management and satisfaction with the Plan. Again, Babich testified that at a Plan meeting or banquet he received a photostatic copy of an article by Chesly Manly in the Chi-

cago Tribune which attempted to discredit the C. I. O. by denouncing its objectives as communistic.[60] And John Sabol, an Employee Representative, testified that at a Plan conference which was attended by a number of company officials, White, vice president of operations, delivered a speech characterizing the C. I. O. as neither an American nor a responsible type of organization.

(*c*) *The Employees' Representative Association*

The Employees' Representative Association was formed after April 13 when Wakefield announced at a meeting of the Plan that the respondent would henceforth be unable to furnish the Plan with financial support. The old Plan, however, was never formally dissolved. John Sabol testified that the Association contemplated the adoption of the bylaws under which the old Plan operated. The record contains no evidence that any other bylaws were formulated which would tend to make the Association independent of the respondent's control. Although some discussion was had regarding the question of assessing membership dues in the Association, there is no evidence that dues were in fact assessed or contributed by employees. There is nothing by which to distinguish the Association from the Plan except that membership was apparently no longer automatic upon voting for a Representative but depended upon the signing of membership cards. The character of the Association membership drive, which took place on the respondent's time and property, further attests to its domination by the respondent.

60. The article, dated Mar. 28, 1937, appears under heading, "SEE C. I. O. DRIVE AS COMMUNISTS IN ITS OBJECTS." The first paragraph, indicating the tenor of the article, reads as follows:

"The industrial union drive of John L. Lewis' Committee for Industrial Organization which has brought the current epidemic of sitdown strikes, is essentially a communist movement and has been advocated as the first step in a program to overthrow the government of the United States and set up a soviet dictatorship ever since the communist party of America was officially organized at Woodstock, N. Y., in May, 1921."

James C. Quinn, an inspector in the 12 inch finishing mill testified that Harold Sisk, an Employee Representative distributed membership cards within the mill and explained the purpose of the Association. On another occasion Art Lawton, the turn superintendent, ordered every man in the mill to go into the office. On the desk in the office were a large number of membership cards, and as the men entered cards were thrust upon them. Quinn testified to the following altercation which he had with Lawton:

> " 'Mr. Lawton,' I says, 'What authority have you got standing up there and chasing them men in there?' I says 'The Supreme Court has just signed the Wagner Relations Act,' I says, 'you haven't a damned bit of business standing up there making them men sign up.' I says, 'The only reason they sign up, if they don't sign it, you will turn them in to their bosses in the morning,' and I says, 'You know what that means, he would come out here and lay them off again like he always does.'
>
> 'Well,' he says, 'the Wagner Labor Relations Act is like everything else,' he says, 'it don't mean a damn thing.'
>
> Then he went on to tell me about me and my bunch of communist friends, John L. Lewis all the way down, he raked them all over the boards . . ."

At about the same time the members of the Plan Sanitation Committee, which had on its schedule a tour of inspection of sanitary conditions, were called into Wakefield's office where Wakefield, May, the Chairman of the General Committee, and Grimm, the Secretary of the General Committee, were present. Wakefield placed a package containing Association membership cards on the table, and said, "Well, we got to get started with this some time or

other and we might as well get started now." In consequence, the Committee, instead of making an inspection tour, solicited employees to sign membership cards.

The employees, however, manifested reluctance to join the Association. Sabol testified that Tull, the superintendent of the electrical department, complained to him about the low percentage of employees in his department who had joined. Tull also summoned Nutting, the foreman of the construction gang, and inquired what the trouble was. Nutting stated that he had a couple of men whose example the rest of the employees seemed to follow, and expressed the opinion that only riddance of them would help matters. Sabol testified that in compliance with Tull's request he made further attempts to prevail upon the employees to join the Association but failed to get any signatures. No deduction was made from Sabol's pay for the time spent in this work.[61]

On the basis of the foregoing facts and the record as a whole, we find that the respondent has dominated and interfered with the formation and administration of the Employees' Representative Association.

3. *The Strike*

The strike in Cleveland commenced on May 26. During the strike, the respondent again resorted to the dissemina-

61. About a week before the strike a new organization, styled The Republic Employees' Association, Corrigan, McKinney Division, came into existence. Relative to this organization, David Mac Means, an employee at the Corrigan, McKinney plant, testified that shortly prior to the strike he was summoned into the office of Eckert, a foreman, and asked to sign a membership card in the Republic Employees' Association. Eckert explained to him that the men were initiating this organization of their own volition and indicated that it would be to Mac Means' best interests to sign the card. Thereafter, Eckert told him, "You better make up your mind to join the Republic Employees Association . . . because all of you fellows are going to belong to it before the end of May." Mac Means also testified that on two occasions he saw notices posted on the bulletin board announcing meetings of the Republic Employee's Association.

tion of literature among its employees calculated to discredit the C. I. O. and to break the strike. Girdler issued for distribution to the employees the statement of June 15 (quoted *supra*), which attacks the C. I. O. as an irresponsible and communistic organization. Also the respondent prepared a reprint (referred to *supra*) of anti-C. I. O. articles culled from various newspapers and entitled, "What the Editors are saying about the Republic Strike." John Exall testified that he received through the mails copies of both the statement issued by Girdler and the reprint.

F. The Central Council of Employee Representatives

Our previous discussion renders superfluous a detailed analysis of the Central Council. It was informally instituted in the fall of 1936, when Employee Representatives from ten of the respondent's plants met in the respondent's offices in Cleveland. After a second meeting at the same place on March 8, 1937, provisions for the participation of Employee Representatives in Central Council meetings were formally incorporated in the proposed revision of the Plan and later in the amended Plan, which was adopted on April 22, 1937. All the expenses of these meetings, including the meals, transportation expenses and salaries of Employee Representatives, were defrayed by the respondent.

On August 2 and 3, 1937, the Chairman of the Central Council called a meeting of the Independent Association of Republic Employees of Massillon to discuss the adoption of constitution and bylaws for the latter organization. Nick Linckenhely, who attended this meeting as a delegate, testified that the respondent paid none of its expenses and that he attended at his own expense.

The function of the Central Council, as already indicated, was to "back the Management in opposition to all outside labor organizations." It was composed in part of Employee Representatives and officers of the various labor organizations at the plants in the Massillon, Canton, Youngstown, Warren, and Cleveland districts, which, we have found, were dominated and controlled by the respondent. Under these circumstances, the Central Council could not represent the free choice of the employees. We find that the respondent has dominated and interfered with the formation and administration of the Central Council of Employee Representatives and has contributed financial and other support to it.

IV. THE CAUSES OF THE STRIKE

The respondent in its answer asserts that the strike was called without any cause or justification and solely for the selfish benefit and advantage of the S. W. O. C. and the C. I. O. in an attempt to gain control of the respondent's employees and all steel company employees, and that there was no labor dispute between the respondent and its employees and no difference as to wages, hours, and working conditions.

From the facts recited in Section III we think it clear that the underlying cause of the strike was the respondent's whole campaign to crush the Union by means of the unfair labor practices set forth above. The record shows that ever since the inauguration of the Plan in June 1933, the respondent had made plain its policy of complete antagonism to the self-organization of the employees and its determination to forestall or destroy any such organization by all means at its command. On July 2, 1936, shortly after the advent of the S. W. O. C., the respondent reiterated this basic policy in a public statement, and immediately and ruthlessly put it into effect. Its spies shadowed union

organizers; its police attacked and beat them; its superintendent and foremen threatened, laid off and discharged employees for union activities; its officers fostered and supported a whole series of puppet labor organizations which the respondent manipulated to oppose the Union; and its president publicly vilified the Union's leaders, purposes and policies under circumstances intended to throw the weight of his influence against his employees' efforts at self-organization. Finally in May 1937 there occurred a series of events which precipitated the strike.

On May 3 the S. W. O. C., by Clinton Golden, wired the respondent that widespread unrest prevailed among its employees over the uncertainty of the respondent's position regarding a signed collective bargaining contract, that this unrest had been accentuated by the lay-off of several hundred Union members at the Canton and Massillon Works, and that "unless we can have definite assurance from you with date for conferences to negotiate written contract without further delay we shall be obliged to disavow all responsibility union members in your mills remaining at work." On May 5 the respondent replied to Golden's telegram that "in view of Wagner Act see no necessity for signed contract. The policy of this company . . . is that it is willing to meet with anyone to bargain with him for whomsoever he represents . . . Will meet with you at any time mutually convenient for collective bargaining purposes."

The complaint does not allege that the S. W. O. C. represented a majority of the employees in any or all of the respondent's plants at this time, or that the respondent's refusal to sign the S. W. O. C. agreement constituted a refusal to bargain collectively within the meaning of Section 8, subdivision (5) of the Act. Nevertheless it is plain that the manner and expression of the repondent's refusal to deal with the S. W. O. C. constituted

interference, restraint and coercion of its employees in their right to self-organization and collective bargaining. The respondent on numerous occasions announced, as its reasons for refusing to sign the agreement with the Union, that it favored the Plan as a successful method of collective bargaining, that it would not tolerate any interference with this successful relationship between management and employees, and that the Union was communistic, corrupt, repressive and irresponsible. Further, on numerous occasions the respondent's superintendents and foremen had announced to meetings of employees that, for the same reasons, the respondent would never sign any contract with the Union. This position was announced in such language as the following: "Regardless if every man in here joins a union, we are not going to recognize it. We are not going to sign any contract. We are not going to have no . . . collective bargaining." "We will shut the mill up and board it up before we will sign with the C. I. O." We think it clear that these repeated statements and the unrest created thereby, to which Golden referred in his telegram, were a contributing and substantial cause of the strike which occurred on May 25 and 26.

On May 5, immediately after replying to Golden's telegram, the respondent shut down its tin plate mill at Canton and locked out approximately 650 of its employees, with the threat that the mill would not reopen "until we got rid of that union." Upon the break-down of negotiations between the respondent and the S. W. O. C. on May 11, the Employee Representatives, with the respondent's support, intensified their attempts to obtain membership for the newly formed successors to the Plan, and conducted meetings in Canton, Massillon, Youngstown and Warren, for the purpose of preparing for a strike and organizing opposition to it. On May 20, under the circumstances described above, the respondent shut down its Massillon

Works, locked out almost 3200 employees, and taunted the president of New Deal Lodge No. 1124 with its illegal conduct: "When we get through starving you out, you won't want to strike."

By these acts, the respondent served final notice in unmistakable terms that it was prepared to go to extreme lengths to destroy the Union and to deny to its employees the rights guaranteed in the Act. Faced with this illegal and provocative conduct, the Union called the strike, not as the respondent alleged, without cause or justification, but because in fact no other course remained open to it. The whole history of the respondent's unfair labor practices, culminating in this lockout on May 20, had placed the Union in a position where it had to fight for its life or be destroyed. The respondent, not the Union, had chosen the way of industrial strife.

We conclude that, although the respondent's refusal to sign the S. W. O. C. agreement, which we do not find to be an unfair labor practice, was in part the immediate cause of the strike, the fundamental cause of the strike, and a substantial factor in its precipitation on May 25 and 26, was the long series of unfair labor practices set forth in Section III above.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent, described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel and Tin Workers of North America are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

2. The Plans of Employee Representation and their successors—the Employees' Representative Association, the Back-to-Work Committee, and the Independent Association of Republic Employees at Massillon; the Employees' Representative Association, the Back-to-Work Committee, and the Steel Workers Union of America at Canton; the Employee Representation Plan, the Independent Federation of Republic Employees, and the Back-to-Work Committee at Youngstown; the Employees' Independent Association of Warren; and the Employees' Representative Association at Cleveland—and the Plan of Representation of Employees at the Canton tin plate mill and the Central Council of Employee Representatives, are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

3. By its domination and interference with the formation and administration of the labor organizations named in paragraph 2 above, and by its contribution of financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, George Troyano-

vich (referred to later as group A); Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (referred to later as group B); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, Fred Korecky (referred to later as group C); Harvey Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin De Long, Hallie P. Hite, Richard John Green (referred to later as group D); and each of them, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

5. By closing the Canton tin plate mill on May 5 and the Massillon Works on May 20 and thereby discriminating in regard to the hire and tenure of its employees at those plants, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

6. By its espionage, shadowing, and beatings of organizers and active members of the Union; its statements to its employees attempting to vilify and discredit the Union; its threats to discharge Union members and to close its plants before recognizing the Union, and its other threats and warnings to employees regarding the Union; its attempts to turn civil authorities, business and other interests against the Union in order to further its own anti-Union activities; its incitement of violence and hysteria, in order to terrorize Union adherents; its donation of tear and vomiting gas to the City of Massillon; its support to the Law and Order League of Massillon and the Back-to-Work Committees in Massillon, Canton, and Youngstown; its activities in connection with the incident at C. I. O. headquarters at Massillon; its lay-offs, discharges and lockouts as stated above; its activities in connection with

the above-named labor organizations; and by each of such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

THE REMEDY

The respondent having engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act and to restore as nearly as possible the situation that existed prior to the commission of the unfair labor practices and which would have existed except for them.

The respondent has unlawfully sponsored and supported various labor organizations discussed above. These organizations cannot, in view of the circumstances, operate as a true representative of the employees, and we shall order the respondent to withdraw recognition from them and to disestablish them as such representative.[62]

The respondent has also unlawfully discriminated

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62. See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*—US—, decided Feb. 28, 1938. The Court upheld the Board's order that the respondent disestablish and withdraw recognition from the Employees Association of the Pennsylvania Greyhound Lines, Inc. as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. The structure and operation of the Plan and its successors, herein, are substantially the same as that of the Employees Association of Pennsylvania Greyhound Lines, Inc.

against its employees by locking them out at the Massillon Works and the Canton tin plate mill. To remedy this illegal conduct, we shall order the respondent to pay the employees involved back pay for the period during which they were deprived of employment.

We have found that the respondent has unlawfully laid off, discharged, and refused reinstatement to certain employees. It has been our practice to order the reinstatement of such employees with back pay for losses suffered by reason of the respondent's unlawful acts. We have also found that the strike at the respondent's plants, which was still in effect at the time of the hearing, was caused in substantial part by the respondent's unfair labor practices. In previous cases of this character we have required the employer to reinstate the striking employees, upon application, to their former or substantially equivalent positions.

The respondent contends, however, that acts of violence by individual strikers renders such reinstatement inequitable in this case. At Massillon and Canton, where counsel for the Board introduced testimony that picketing by the strikers was peaceful, the Board and the Trial Examiner permitted the respondent to adduce testimony in rebuttal that certain named striking employees, as well as other unidentified persons alleged to be members of C. I. O., had carried sticks and clubs, cut a telephone wire, blocked roads, intimidated and beaten several members of the Canton Back-to-Work Committee and other non-strikers, and had in certain respects violated an injunction issued on or about June 25, 1937, by the Court of Common Pleas of Stark County. In Youngstown, Warren, and Cleveland, where counsel for the Board introduced no testimony on the issue of peaceful picketing, the Trial Examiner excluded testimony that strikers had committed acts of violence, but permitted the respondent to file written offers of proof setting

out such testimony in detail. On March 19, 1938, the Board denied a motion by the respondent for leave to introduce additional evidence relating to violence, but granted its alternative motion for leave to submit and have incorporated in the record as a part thereof, evidence, inter alia, that certain named strikers, after the close of the hearing in this case, had pleaded guilty to indictments for various crimes committed in connection with the strike.

In considering the issue of violence in this case it should be borne in mind that, as we have pointed out before, the Board's power to order reinstatement is equitable in nature, to be exercised in the light of all the circumstances of the case.[63] Here, as we discuss more fully hereafter, the respondent has not only engaged in a long series of flagrant unfair labor practices but has itself committed or been responsible for numerous serious acts of violence. Our treatment of violence upon the part of the respondent's striking employees must be considered in the light of these facts.

Evidence that strikers have committed acts of violence is clearly relevant on the issue whether it is equitable to order their reinstatement. We will therefore take into consideration evidence of convictions and pleas of guilty of acts of violence committed by individual strikers in connection with the strike. In a case of the sort, however, we will not attempt to try before the Board accusations of violence which did not result in convictions or sentences upon pleas of guilty.

To receive evidence upon such matters would raise a mass of collateral issues which the Board is not equipped to handle. The Board, of course, does not have the facilities

63. See *Matter of Standard Lime and Stone Company*, Case No. C-220, 5 N. L. R. B. No. 15; *Matter of United States Stamping Company*, Case No. C-203, 5 N. L. R. B. No. 29.

for investigation and prosecution of acts of violence that the local law enforcement agencies possess. Nor, as an administrative matter, can the Board attempt to determine the merits of allegations of several hundred various crimes.

We think also that the Board is entitled to rely upon the local law enforcement agencies for proof of such matters. The record shows that the police and prosecuting authorities of various towns were active throughout and after the strike. Numerous arrests were made and many convictions obtained. Under these circumstances the Board is inclined to feel that it can presume that any significant crime committed was investigated by the proper authorities and, if adequate evidence was found, was prosecuted by them. As a result, especially in view of the administrative difficulty of trying such collateral issues, the Board will not go into alleged acts of violence of individual strikers beyond accepting the offer of proof, and taking judicial notice, of convictions and pleas of guilty.

It should be noted that the reasons for excluding testimony, but admitting pleas of guilty or convictions, with regard to acts of violence by employees, do not apply in the case of testimony concerning similar acts by the respondent. Such testimony relates to whether the respondent has interfered with, restrained, or coerced his employees in their right to self-organization and collective bargaining, and has thereby engaged in unfair labor practices within the meaning of the Act. Consequently, it raises direct, not collateral, issues which it is our proper duty to determine.[64]

64. That such a conclusion is in accordance with the clear intent of the Congress may be seen from the Reports of the Senate and House Committees in considering the reasons for confining the Act to unfair labor practices by employers. Thus the Senate Committee on Education and Labor, in reporting the bill to the Senate, said: "The bill is not a mere police court measure. The remedies against such acts (fraud and violence) in the State and Federal courts and by the invocation of local police authorities are now adequate, as arrests and injunctions in labor disputes throughout the country

We therefore affirm the rulings of the Trial Examiner in this matter.[65]

We come now to an examination of the evidence which we deem admissible upon this issue.

An analysis of the pleas of guilty in the respondent's offers to prove, of which we take judicial notice, supplemented by an examination of the criminal dockets of the Municipal Courts of Niles and Cleveland, the Courts of Common Pleas of Trumbull, Mahoning, and Cuyahoga Counties, and the United States District Court for the Northern District of Ohio, Eastern Division, at Cleveland, shows that seven "members or former members of the C. I. O." were indicted for the "possession and use of explosives," a felony; that three pleaded guilty to the indictment and received sentences of 1 to 20 years in the Ohio penitentiary; that three others who pleaded guilty to the indictment were placed on probation for 5 years; and that one pleaded guilty to "malicious destruction of property to the value of $300," a felony, and was fined $300 and costs. It also appears that nine "members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee" pleaded guilty to indictments for "unlawfully obstructing and retarding

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will attest . . . In addition, the procedure set up in this bill is not nearly so well suited as is existing law to the prevention of fraud or violence. Deliberations and hearings by the Board, followed by orders that must be referred to the Federal Courts for enforcement are methods of procedure that could never be sufficiently expeditious to be effective in this connection. The only results of introducing proposals of this sort into the bill, in the opinion of the committee, would be to overwhelm the Board with countercharges and recrimination that would prevent it from doing the task that needs to be done." (Sen. Rep. No. 573, 74th Cong. 1st Sess. (1935) 16, 17. See also H. R. No. 1147, 74th Cong. 1st Sess. 1935, 16.)

65. At Youngstown the respondent offered to prove that "six members or former members of the C. I. O." had pleaded guilty to the possession and use of explosives; and, at Cleveland, that two individuals had pleaded guilty to police court offenses. In excluding such evidence, the Trial Examiner was in error. In view, however, of the fact that we take judicial notice of these pleas of guilty in the offer to prove and give them due weight in our consideration of the purpose for which they are offered, the error is not prejudicial.

the passage of the United States Mail," a misdemeanor; that six received suspended sentences of 6 months in jail and were placed on probation; that two received sentences of 30 days in jail and costs; and that one received three sentences, to run concurrently, of 60 days in jail and costs. It further appears that 99 "individuals, members of lodges or unions affiliated with the Committee for Industrial Organization and the Steel Workers Organizing Committee"[66] entered pleas of guilty to the following offenses:

Assault and Battery (a misdemeanor) [67]	12
Rioting, assembling together to do an unlawful act (a misdemeanor) [68]	67
Malicious destruction of property to the value of $50 (a misdemeanor) [69]	6
Interfering with and obstructing railway tracks (a felony) [70]	5
Carrying concealed weapons (a felony)[71]	9

With the exception of the six men who pleaded guilty to the possession and use of explosives, and the one man who pleaded guilty to the malicious destruction of property

66. The respondent did not allege and the record does not disclose that more than four of the individuals who entered pleas of guilty as set forth in the offer to prove were employees of the respondent. We shall assume, however, that all individuals alleged to be members of unions affiliated with the C. I. O. or the S. W. O. C. are employees of the respondent.

67. One was sentenced to pay the costs, but the costs were suspended; one was fined $25 and costs; nine were fined $25 and costs and given suspended sentences of 30 days in the county jail; one was fined $200 and costs, given a suspended sentence of 6 months in the county jail, and placed on probation for 1 year.

68. All 67 were fined $25 and costs and given suspended sentences of 30 days in the county jail.

69. Five were fined $50 and costs and given suspended sentences of 60 days in the county jail; one was fined $300 and costs and given a suspended sentence of 30 days in the county jail.

70. All five were fined $50 and costs and given suspended sentences of 60 days in the county jail.

71. All nine were fined $50 and costs and given suspended sentences of 60 days in the county jail.

to the value of $300, we cannot concur in the contention that these individuals have disqualified themselves from reemployment or that their crimes constitute valid reasons for dismissing the complaint. As we have pointed out, the respondent has committed or has been responsible for acts of violence far more serious than these offenses to which the strikers have pleaded guilty. We have found that the respondent is responsible for the incident at C. I. O. headquarters in Massillon, as a result of which three persons received fatal injuries, an undetermined number were injured by gun fire and gas fumes, 165 were arrested without warrants, and 164 held in jail without charges against them for periods ranging from one to four days. We have also found that the respondent's police at Cleveland brutally assaulted Alex Balint, an organizer for the Union, and on another occasion, beat Paul Castman, an active member of the Union, so severely that he spent 16 days in the hospital. In addition, uncontradicted testimony in the record indicates that a company guard at the Union Drawn Steel Company at Massillon attacked and burned Joe Morton, president of New Deal Lodge No. 1124, with a gas club, and left town after a warrant had been sworn out for his arrest; and that the respondent's Chief of Police, foremen and a superintendent at the Canton Works held Moesses Rafailedes, a member of the Union, against his will in the plant during the strike from May 25 to May 29, and despite the pleas of his family, refused to release him, until two priests effected his rescue.

In view of these acts of violence by the respondent, we are of the opinion that the respondent does not come before us with clean hands in asking us to refuse reinstatement to certain employees otherwise entitled to it.[72]

Furthermore, although the respondent refused to rein-

72. See *Matter of Biles Coleman Lumber Company*, Case No. C-197, 4 N. L. R. B. No. 86.

state certain employees at Youngstown and elsewhere, allegedly for the reason that they had carried sticks or clubs on the picket line, it paid a bonus to the members of the Back-to-Work Committee of guards at Canton for patrolling the city armed with shotguns, and reinstated all such employees without question. In view of this discrimination, we are compelled to conclude that the real motive behind the respondent's refusal to reinstate striking employees was their union affiliation rather than an honest belief that by carrying sticks and clubs on the picket line they had proved themselves unfit for reemployment.[73]

Finally, the respondent, by engaging in the unfair labor practices described in Section III above, has itself violated the law of the land and thereby caused the strike of its employees in which the acts of violence occurred. While the Act imposes no criminal penalties for these unfair labor practices, it expresses an important national policy, in the light of which the respondent's illegal course of conduct must be judged and the consequences of that conduct determined. For these reasons, it does not lie in the mouth of the respondent to assert that the offenses of its striking employees are necessarily and of themselves a bar to their reinstatement.[74]

Under all these circumstances and without condoning the illegal acts of the strikers, we feel that such acts should not be a bar to the reinstatement of any, except those who pleaded guilty to the possession and use of explosives and the malicious destruction of property to the value of $300. The seven to be excluded are Charles Byers, Sidney Watkins, A. C. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh, and Mike Spelich.

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73. See *Matter of Kentucky Firebrick Company*, Case No. C-179, 3 N. L. R. B. No. 46.

74. See *Matter of Standard Lime and Stone Company*, Case No. C-220, 5 N. L. R. B. No. 15; *Matter of United States Stamping Company*, Case No. C-203, 5 N. L. R. B. No. 29.

The respondent also contends that the strike as a whole was unlawful from the time pickets carried clubs and engaged in acts of violence, that all the strikers were acting in concert to carry out an illegal purpose and were responsible for the illegal acts of any of the other strikers, and that therefore none of the strikers should be reinstated and the complaint should be dismissed. This contention must be considered in the light of Section 6 of the Act of March 23, 1932, known as the Norris-LaGuardia Act.

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents except upon clear proof of actual participation in or actual authorization of such acts or of ratification of such acts after actual knowledge thereof." (Sec. 6, Act of March 23, 1932, 47 U. S. Stat. 70, C. 90).

With the possible exception of the 67 employees who pleaded guilty to rioting or assembling together to do an unlawful act, the respondent has neither proved nor offered "clear proof of actual participation in or actual authorization . . . (or) ratification" by strikers of the individual unlawful acts committed by other strikers. Further, the considerations recited above in connection with the acts of individual strikers apply even more clearly here. As an administrative matter the Board is not equipped to determine whether thousands of strikers participated in or authorized or ratified unlawful acts by other strikers. Therefore, although we will accept evidence of convictions of illegal concerted action obtained by the local enforcement authorities, we will not try such issues before the Board.

Finally, even if there were proof of conviction of illegal concerted action we would not, in view of respond-

ent's own role in the strike and the events prior thereto, consider such conviction ground for a blanket refusal to reinstate all strikers.

We shall, therefore, order the respondent to offer the employees who were laid off, discharged, or refused reinstatement for their union activity immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges, and to pay such employees back pay for losses suffered by reason of the respondent's unlawful acts. We shall also order the respondent, upon application, to offer similar reinstatement to its employees who were on the pay roll at its plants in the Canton, Massillon, Youngstown, Warren, Niles, and Cleveland districts on May 25, 1937, and who went out on strike on May 25 and thereafter, and have not since been fully reinstated.

Such reinstatement shall be effected in the following manner: Each employee ordered reinstated shall be entitled to reinstatement to his former or a substantially equivalent position in the plant where he was employed at the time of his lay-off or discharge, or at the time of the strike. In the case of those employees who were laid off or discharged, all employees hired after such lay-off or discharge shall, if necessary to provide positions for those to be reinstated, be dismissed; and in the case of strikers to be reinstated all employees hired after the commencement of the strike shall, if necessary to provide positions for those to be reinstated, be dismissed. If, thereafter, by reason of a reduction in force there are not sufficient positions available in any plant for the remaining employees, including those to be reinstated, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities and following a system of

seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such reduction, for whom there are then no available positions, shall be placed upon a preferential list prepared in accordance with principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or substantially equivalent positions at any of the respondent's plants,[75] regardless of their previous place of employment, as such employment becomes available and before other persons are hired for such work.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Republic Steel Corporation, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto;

(b) Discouraging membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America or the Steel Workers Organizing Committee or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire or tenure of

75. To be included among such plants are any plants which the respondent has acquired since the date of the hearing from its subsidiaries or otherwise.

employment or any form or condition of employment or by threats of such discrimination;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Plan of Employee Representation, and its successors—the Employees' Representative Association and the Independent Association of Republic Employees at Massillon; the Plan of Employee Representation, and its successors—the Employees' Representative Association, and the Steel Workers Union of America, and the Plan of Representation of Employees at Canton; the Plan of Employee Representation, and its successors—the Employee Representation Plan, and the Independent Federation of Republic Employees at Youngstown; the Plan of Employee Representation, and its successor—the Employees' Independent Association at Warren; the Plan of Employee Representation, and its successor—the Employees' Representative Association at Cleveland; the Central Council of Employee Representatives; and each of them, as the representatives of any of its employees at its plants in the Massillon, Canton, Youngstown, Warren, Niles, and Cleveland districts, respectively, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of

work; and completely disestablish the foregoing labor organizations as such representatives;

(b) Offer to Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, and George Troyanovich (group A); Harry Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin de Long, Richard John Green, and Hallie P. Hite (group B), in the manner provided in the section entitled "The remedy" above, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges; and make them whole for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period, in the case of group A, from the date of their lay-off or discharge until the date when the strike began, and again from the date on which operations in their departments began after the reopening of the plants involved to the date of the offer of reinstatement as provided herein, and in the case of group B, from the date of the refusal to reinstate until the date of the offer of reinstatement as provided herein, less the amounts, if any, which each earned during said period;

(c) Make whole Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (group C); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, and Fred Korecky (group D) for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, respectively, of a sum of money equal to that which each

of them would normally have earned as wages during the period, in the case of group C, from the date of their discharge to the date of their offer of reinstatement prior to the strike, and in the case of group D, from the date of their lay-off or discharge until the date of the strike, less the amounts, if any, which each earned during said period;

(d) Make whole the employees of the Canton tin plate mill who were employed on May 4, 1937, for any loss of pay they have suffered by reason of the closing of the Canton tin plate mill on May 5, 1937, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from May 5 to May 24, 1937, less the amount, if any, which each has earned during said period;

(e) Make whole the employees of the Massillon Works, who were employed on May 19, 1937, for any loss of pay they have suffered by reason of the closing of the Massillon Works on May 20, 1937, by payment to each of them, respectively, of a sum which each of them would normally have earned as wages during the period from May 20 to May 23, 1937, less the amount, if any, which each has earned during said period;

(f) Upon application, offer to those employees at its plants in the Canton, Massillon, Youngstown, Warren, Niles, and Cleveland districts, (including those referred to as groups C and D in paragraph 2 (c) above), who went on strike on May 25, 1937, and thereafter, (except Charles Byers, Sidney Watkins, A. C. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh, and Mike Spelich), immediate and full rein-

statement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, in the manner provided in the section entitled "The remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(g) Make whole all the employees referred to in paragraph 2 (f) above for any losses they may suffer by reason of any refusal of reinstatement or placement upon the preferential list required by paragraph 2 (f) above by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from five (5) days after the date of application to the date of offer of reinstatement or placement upon the preferential list, less the amount, if any, which each, respectively, earned during said period;

(h) Post immediately in conspicuous places in its plants in the Canton, Massillon, Youngstown, Warren, Niles and Cleveland districts, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid and that recognition is withdrawn from the labor organizations named in paragraph 2 (a) above as representatives of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the foregoing labor organizations are completely disestablished as such representatives;

(i) Notify the National Labor Relations Board in writing within ten (10) days from the date of this

Order what steps the respondent has taken to comply herewith.

Dated at Washington, D. C., this 8th day of July, 1938.

(Return Receipt cards of those named above attached (except S. W. O. C.) attached)

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Owen Fetters, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 8th day of July, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Order, Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Board to the following named persons, addressed to them at the following addresses:

Mr. Lee Pressman
1106 Connecticut Avenue
Washington, D. C.
69363

Mr. Luther Day
Day, Young and Veach
1420 Union Trust Building
Cleveland, Ohio
69371

Mr. H. C. Pontius
Lynch, Day, Pontius and Lynch
Canton, Ohio
69369

Harrington, Huxley and Smith
1200 Mahoning Bank Building
Youngstown, Ohio
69370

J. G. Ketterer
First National Bank Building
Canton, Ohio
69367

Thomas Patton
Republic Building
Cleveland, Ohio
69368

Steel Workers Organizing Committee
3600 Grant Building
Pittsburgh, Pennsylvania
69364

OWEN C. FETTERS

Subscribed and sworn to before me this 8th day of July 1938.

Harold G. Wilson,
Notary Public, District of Columbia

My Commission expires May 15, 1941.
(Seal)

XIX.

RESPONDENT'S EXCEPTIONS TO PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER; REQUEST TO THE BOARD FOR FURTHER INFORMATION; AND RESPONDENT'S EXCEPTIONS TO RULINGS OF BOARD AND TRIAL EXAMINER UPON MOTIONS, OBJECTIONS AND OFFERS TO PROVE AT THE HEARING OF EVIDENCE HEREIN.

(Docketed Aug. 6, 1938)

Now comes Republic Steel Corporation, the respondent, and expressly averring and reasserting that the Board had no jurisdiction whatsoever under the National Labor Relations Act or the National Labor Relations Board Rules and Regulations (including Article II, Section 38 (d) thereof, upon which the Board relies), or otherwise, to make or issue proposed findings of fact, proposed conclusions of law and proposed order, and expressly reserving all rights and benefits of any motions or objections or exceptions heretofore made or taken by it and appearing in any part of the record herein, and expressly relying upon said motions, objections and exceptions, states the following as its exceptions to the Board's proposed findings of fact, proposed conclusions of law and proposed order, and also its exceptions to the rulings of the Board and the Trial Examiner upon motions, objections and offers to prove at the hearing of evidence herein.

EXCEPTIONS TO THE BOARD'S PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER.

1. Respondent excepts to the order of the Board of

July 8, 1938, directing the issuance of proposed findings of fact, proposed conclusions of law and proposed order, and affording opportunity to file exceptions and briefs and setting oral argument, upon the ground that the Board had no jurisdiction or authority or power, whatsoever, under the provisions of the National Labor Relations Act, or the National Labor Relations Board Rules and Regulations (including Article II, Section 38(d) thereof, upon which the Board relies), or otherwise, to make or issue said order of July 8, 1938.

2. Respondent excepts to each and all of the Board's proposed findings of fact, each and all of its proposed conclusions of law, and to its proposed order upon the ground that the Board had no jurisdiction, authority or power, whatsoever, under the provisions of the National Labor Relations Act, or the National Labor Relations Board Rules and Regulations (including Article II, Section 38(d) thereof, upon which the Board relies), or otherwise, to make or issue said proposed findings of fact, proposed conclusions of law and proposed order.

3. Respondent excepts to the action of the Board in overruling and denying its objection to the vacating and setting aside by the Board of its findings and order of April 8, 1938, for the purpose of further proceedings before the Board, said objection being based upon the ground that the Board had no jurisdiction, authority or power whatsoever to vacate and set aside said findings and order for the purpose of further proceedings before the Board.

4. Respondent excepts to the action of the Board in overruling and denying its motion to dismiss the complaint herein and its objection to further proceedings by the Board herein, said motion and objection being filed after the Board, on June 14, 1938, had set aside its order heretofore made and issued on April 8, 1938, and being based upon the ground that the Board, after it had set aside its said order

of April 8, 1938, was altogether without any jurisdiction, power or authority whatsoever to take any further proceedings herein.

5. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the Board was wholly without any jurisdiction, authority or power whatsoever, under the provisions of the National Labor Relations Act or the National Labor Relations Board Rules and Regulations (including Article II, Section 38(d) thereof, upon which the Board relies), or otherwise, to set aside its order of April 8, 1938 for the purpose of taking further proceedings before the Board in this cause.

6. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the Board, having heretofore, on April 8, 1938 made and issued its final findings of fact, final conclusions of law and final order, and later, on June 14, 1938, having voluntarily set them aside, was thereafter and is now wholly without jurisdiction, authority or power under the provisions of the National Labor Relations Act, or the National Labor Relations Board Rules and Regulations (including Article II, Section 38(d) thereof, upon which the Board relies), or otherwise, to make or issue further proposed findings of fact, proposed conclusions of law, or a proposed order herein.

7. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the Board, in making and issuing them, and allegedly affording the respondent an opportunity to have a hearing thereon, is not, in law or in fact, actually taking further proceedings herein or granting an actual legal hearing to the respondent upon the matters involved herein, but is merely attempting to regularize its proceedings herein and its action heretofore taken on April

8th, 1938, when it made and issued, without affording to respondent any hearing whatsoever as to the charges made against it in the complaint herein or upon the questions of law and fact herein involved, its final findings of fact, its final conclusions of law and its final order herein, which were, as appears from the record, in all substantial respects identical with its proposed findings of fact, proposed conclusions of law and proposed order.

8. Respondent excepts to the proposed order of the Board upon the ground that said proposed order does, and if made final would, deny to the respondent due process of law in violation of the Fifth Amendment to the Constitution of the United States by reason of the proceedings taken and the acts of the Board herein, to wit: The charges made against respondent in the complaint herein and put in issue by respondent's answer herein were heard in part before the Board and in part before a Trial Examiner designated by the Board; after such hearing, no intermediate report was filed with the Board by the Trial Examiner nor were any proposed findings of fact, proposed conclusions of law or proposed order made or issued by the Trial Examiner or the Board; on April 8, 1938, more than six months after the hearings had been concluded, the Board, without affording to respondent any hearing whatsoever, made and issued final findings of fact, final conclusions of law, and a final order herein against the respondent; on June 14, 1938, the Board voluntarily set aside its final findings and final order of April 8, 1938, thereby likewise setting aside its final conclusions of law, the Board stating that its reason for such action was so that it might take such further proceedings herein as it deemed necessary or desirable; on July 8, 1938, the Board, without affording to the respondent any hearing whatsoever, and without first notifying respondent, as respondent had requested, as to what further proceedings it proposed to take, made and

issued its proposed findings of fact, proposed conclusions of law, and proposed order, which are substantially identical, with its original findings of fact, conclusions of law and order, and sought to afford to respondent an opportunity to file exceptions thereto and to have a hearing thereon, on August 11, 1938; any hearing such as is now offered respondent by the Board, after the Board had already finally determined all questions of fact and of law herein and had made and issued its final order herein (April 8, 1938), would not and could not be a hearing in accordance with the law of the land and the usual and accepted rules of procedure and would not and could not grant or secure to the respondent due process of law as guaranteed to it by the Fifth Amendment to the Constitution of the United States.

9. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that respondent was not afforded any hearing as to the charges made against it in the complaint until after the Board had determined and decided all questions of fact and of law herein, and had made and issued its final order herein (April 8, 1938); and, in this connection, respondent avers that the alleged hearing now offered by the Board is nothing more than a hearing upon questions of fact and questions of law already decided by the Board and is, therefore, not a hearing in accordance with the law of the land and the usual and accepted rules of procedure and is, therefore, a denial to the respondent of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

10. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the Board made up its mind and reached a determination with relation to said proposed findings of fact, proposed conclusions of law and proposed

order without affording the respondent a hearing before the Board as to the charges made against it in the complaint, or as to questions of law and of fact herein involved, thereby denying to the respondent due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

11. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the National Labor Relations Act is null and void and of no legal effect whatsoever, because it denies to the respondent due process of law in violation of the Fifth Amendment to the Constitution of the United States, and seeks to delegate to the Board the right to exercise legislative power in violation of Article I, Section 1 of the Constitution of the United States and the right to exercise judicial power in violation of Article III, Section 1 of the Constitution of the United States.

12. Respondent excepts to the action of the Board in affirming each and all of the rulings of the Trial Examiner made at the hearing before him upon motions and objections and offers of proof upon the ground that said Trial Examiner did in fact commit in that regard many errors prejudicial to the respondent, all as appears in detail in the exceptions of the respondent to the rulings of the Board and the Trial Examiner at the hearing of this case and in the record herein.

13. Respondent excepts to each and all of the Board's proposed findings of fact, proposed conclusions of law and to its proposed order upon the ground that they are based in substantial part upon evidence erroneously admitted to the prejudice of the respondent at the hearing of this case before the Board and the Trial Examiner, respectively, and give no consideration whatsoever to certain relevant and competent evidence offered at the hearing by the respondent

but excluded to its prejudice by the Board and Trial Examiner, respectively, all as appears in detail in the exceptions of the respondent to the rulings of the Board and of the Trial Examiner at the hearing of this case and in the record herein.

14. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law, and proposed order upon the ground that the Board should have dismissed the complaint herein for the reasons set forth in the respondent's answer herein filed.

15. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law, and proposed order for the reason that the Board should have dismissed the complaint herein by granting a motion to that end made by the respondent at the conclusion of the evidence offered by the Board, as fully appears in the record herein.

16. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law, and proposed order for the reason that the evidence herein does not disclose any unfair labor practices committed by the respondent or the existence of any current labor dispute, and, hence the Board has no jurisdiction in this case.

17. Respondent excepts to the proposed order of the Board (pp. 122-124, inc.)* as a whole upon the grounds that said proposed order is contrary to law; is not supported by the evidence herein; is based upon the Board's proposed findings which are not supported by the evidence herein; is based upon the Board's proposed conclusions of law which are unsound and incorrect statements of law and are not supported by or applicable to the evidence nor

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* Page references herein are to pages of "Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the National Labor Relations Board," a copy of which was served on respondent.

by the record herein; is beyond the jurisdiction of the Board, and is not based upon or justified by the Board's own proposed findings of fact or own conclusions of law.

(17-a) Respondent excepts to the Board's proposed Order No. 1-a (p. 122) by which the Board orders the respondent, its officers, agents, successors and assigns to

1. Cease and desist from:

(a) Dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto.

upon the grounds stated in and in support of exception No. 17; and upon the further grounds that it covers future transactions not connected with transactions at issue in the present case, present transactions outside of the issues in the case, and is so indefinite as to require interpretation by the respondent at its peril.

(17-b) Respondent excepts to the Board's proposed Order No. 1-b (p. 123) by which the Board orders the respondent, its officers, agents, successors, and assigns to

1. Cease and desist from:

(b) Discouraging membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America or the Steel Workers Organizing Committee or any other labor organization of its employees, by discharging and refusing to reinstate employees, or otherwise discriminating in regard to hire or tenure of employment or any form or condition of employment or by threats of such discrimination.

upon the grounds stated in and in support of exceptions Nos. 17 and 17-a.

(17-c) Respondent excepts to the Board's proposed Order No. 1-c (p. 123) by which the Board orders the re-

spondent, its officers, agents, successors, and assigns to

1. Cease and desist from:

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

upon the gounds stated in and in support of exceptions Nos. 17 and 17-a.

(17-d) Respondent excepts to the Board's proposed Order No. 2-a (p. 123) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Plan of Employee Representation, and its successors—the Employees' Representative Association and the Independent Association of Republic Employees at Massillon; the Plan of Employee Representation, and its successors—the Employees' Representative Association, and the Steel Workers Union of America, and the Plan of Representation of Employees at Canton; the Plan of Employee Representation, and its successors—the Employee Representation Plan, and the Independent Federation of Republic Employees at Youngstown; the Plan of Employee Representation, and its successor—the Employees' Independent Association at Warren; the Plan of Employee Representation, and its successor—the Employees' Representative Association at Cleveland; the Central Council of Employee Representatives; and each of them, as the representatives of any of its employees at its plants in the Massillon, Can-

ton, Youngstown, Warren, Niles, and Cleveland districts, respectively, for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and completely disestablish the foregoing labor organizations as such representatives.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in exception 17 hereof, and upon the further and additional ground that the National Labor Relations Act, if construed as vesting power and jurisdiction in the National Labor Relations Board to make and issue said order so as to effectuate the policies of the act, is unconstitutional and void as being an attempt by Congress to vest legislative power in the National Labor Relations Board, in violation of Article I, Section 1, of the Constitution of the United States.

(17-e) Respondent excepts to the Board's proposed Order No. 2-b (p. 123) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

(b) Offer to Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, and George Troyanovich (group A); Harry Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin de Long, Richard John Green, and Hallie P. Hite (group B), in the manner provided in the section entitled "The remedy" above, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges; and make them whole for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period, in the case of group A, from the date of

their lay-off or discharge until the date when the strike began, and again from the date on which operations in their departments began after the reopening of the plants involved to the date of the offer of reinstatement as provided herein, and in the case of group B, from the date of the refusal to reinstate until the date of the offer of reinstatement as provided herein, less the amounts, if any, which each earned during said period.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-f) Respondent excepts to the Board's proposed Order No. 2-c (p. 123) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

(c) Make whole Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (group C); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, and Fred Korecky (group D) for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period, in the case of group C, from the date of their discharge to the date of their offer of reinstatement prior to the strike, and in the case of group D, from the date of their lay-off or discharge until the date of the strike, less the amounts, if any, which each earned during said period.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in

and in support of Section 17-d hereof.

(17-g) Respondent excepts to the Board's proposed Order No. 2-d (p. 124) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

> (d) Make whole the employees of the Canton tin plate mill who were employed on May 4, 1937, for any loss of pay they have suffered by reason of the closing of the Canton tin plate mill on May 5, 1937, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned as wages during the period from May 5 to May 24, 1937, less the amount, if any, which each has earned during said period.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-h) Respondent excepts to the Board's proposed Order No. 2-e (p. 124) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

> (e) Make whole the employees of the Massillon Works, who were employed on May 19, 1937, for any loss of pay they have suffered by reason of the closing of the Massillon Works on May 20, 1937, by payment to each of them, respectively, of a sum which each of them would normally have earned as wages during the period from May 20 to May 23, 1937, less the amount, if any, which each has earned during said period.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of ex-

ception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-i) Respondent excepts to the Board's proposed Order No. 2-f (p. 124) by which the Board orders the respondent to take the following affimative action which the Board finds will effectuate the policies of the Act:

> (f) Upon application, offer to those employees at its plants in the Canton, Massillon, Youngstown, Warren, Niles, and Cleveland districts (including those referred to as groups C and D in paragraph 2-c above), who went on strike on May 25, 1937, and thereafter, (except Charles Byers, Sidney Watkins, A. C. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh, and Mike Spelich), immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights or privileges, in the manner provided in the section entitled "The remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-j) Respondent excepts to the Board's proposed Order No. 2-g (p. 124) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

> (g) Make whole all the employees referred to in paragraph 2-f above for any losses they may suffer by reason of any refusal of reinstatement or placement upon the preferential list required by paragraph

2-f above by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from five (5) days after the date of application to the date of offer of reinstatement or placement upon the preferential list, less the amount, if any, which each, respectively, earned during said period.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-k) Respondent excepts to the Board's proposed Order No. 2-h (p. 124) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

(h) Post immediately in conspicuous places in its plants in the Canton, Massillon, Youngstown, Warren, Niles, and Cleveland districts, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid and that recognition is withdrawn from the labor organizations named in paragraph 2-a above as representatives of any of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the foregoing labor organizations are completely disestablished as such representatives.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

(17-l) Respondent excepts to the Board's proposed

Order No. 2-i (p. 124) by which the Board orders the respondent to take the following affirmative action which the Board finds will effectuate the policies of the Act:

> (i) Notify the National Labor Relations Board in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Respondent excepts to the Board's proposed order aforesaid upon the grounds set forth in and in support of exception 17 hereof, and the additional ground set forth in and in support of Section 17-d hereof.

18. Respondent excepts to that portion of the Board's proposed findings of fact, proposed conclusions of law, and proposed order which is styled "The remedy," (pp. 117-122, inc.) and to each and every statement therein contained, for the reason that such statements are each and all contrary to law and not supported by the evidence or by the record herein.

19. Respondent excepts to the Board's proposed conclusions of law numbered from 1 to 7, inclusive (pp. 116-117, inc.), as a whole, upon the grounds that said proposed conclusions of law are, as a whole, unsound and incorrect statements of law; are not supported by, or applicable to, the evidence herein; are based upon proposed findings of fact which are not supported by the evidence herein, and are not warranted by the entire record herein; and are beyond the jurisdiction of the Board.

(19-a) Respondent excepts to the Board's proposed conclusion of law No. 1 (p. 116), as follows:

> 1. Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel and Tin Workers of North America are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

upon the ground that said proposed conclusion of law No.

1 is not supported by the evidence herein.

(19-b) Respondent excepts to the Board's proposed conclusion of law No. 2 (p. 116), as follows:

> 2. The plans of Employee Representation and their successors—the Employees' Representative Association, the Back-to-Work Committee, and the Independent Association of Republic Employees at Massillon; the Employees' Representative Association, the Back-to-Work Committee, and the Steel Workers Union of America at Canton; the Employee Representation Plan, the Independent Federation of Republic Employees, and the Back-to-Work Committee at Youngstown; the Employees' Independent Association of Warren; and the Employees' Representative Association at Cleveland—and the Plan of Representation of Employees at the Canton tin plate mill and the Central Council of Employee Representatives, are labor organizations within the meaning of Section 2, subdivision (5) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

(19-c) Respondent excepts to the Board's proposed conclusion of law No. 3 (p. 116), as follows:

> 3. By its domination and interference with the formation and administration of the labor organizations named in paragraph 2 above, and by its contribution of financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

(19-d) Respondent excepts to the Board's proposed conclusion of law No. 4 (p. 116), as follows:

> 4. By discriminating in regard to the hire and tenure of employment of Peter Mouyios, Victor Arias, Mike Ugranovich, Will S. Wright, Sabri Shaban, George Troyanovich (referred to later as group A); Thomas Cikah, John Popik, Frank Pirichy, Michael Naletrich, Wilbert Neuman (referred to later as group B); Thomas White, Charles Bernard Fagan, John Exall, John Petak, Mathew Babich, Gaetano Armeli, Fred Korecky (referred to later as group C); Harvey Rigby, John Lazar, Michael Krill, Balare Chismus, William A. Haren, Charles Neverdusky, Anthony Martin de Long, Hallie P. Hite, Richard John Green (referred to later as group D); and each of them, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

(19-e) Respondent excepts to the Board's proposed conclusion of law No. 5 (p. 116), as follows:

> 5. By closing the Canton tin plate mill on May 5 and the Massillon Works on May 20 and thereby dis-

criminating in regard to the hire and tenure of its employees at those plants, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

(19-f) Respondent excepts to the Board's proposed conclusion of law No. 6 (pp. 116 and 117), as follows:

6. By its espionage, shadowing, and beatings of organizers and active members of the Union; its statements to its employees attempting to vilify and discredit the Union; its threats to discharge Union members and to close its plants before recognizing the Union, and its other threats and warnings to employees regarding the Union; its attempts to turn civil authorities, business and other interests against the Union in order to further its own anti-Union activities; its incitement of violence and hysteria, in order to terriorize Union adherents; its donation of tear and vomiting gas to the City of Massillon; its support to the Law and Order League of Massillon and the Back-to-Work Committees in Massillon, Canton, and Youngstown; its activities in connection with the incident at C. I. O. headquarters at Massillon; its lay-offs, discharges and lockouts as stated above; its activities in connection with the above-named labor organizations; and by each of such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and

> has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

(19-g) Respondent excepts to the Board's proposed conclusion of law No. 7 (p. 117), as follows:

> 7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

upon the grounds that said proposed conclusion of law is an unsound and incorrect statement of law; is not supported by or applicable to the evidence herein; is based upon proposed findings of fact which are not supported by the evidence herein and are not warranted by the entire record herein; and is beyond the jurisdiction of the Board.

20. Respondent excepts to all of that portion of the Board's proposed findings of fact, proposed conclusions of law, and proposed order which is designated therein as "Findings of Fact," upon the ground that it is not in proper and legal form in that it has mingled therein statements of witnesses, expressions of opinion, references to evidence and matters of argument upon the part of the Board. Preserving the exception just above noted, respondent excepts to the Board's proposed findings of fact as a whole upon the ground that said findings of

fact are, as a whole, not supported by the evidence nor by the record herein. Respondent, preserving the above exceptions, excepts, upon the grounds already noted, separately to each and every finding, statement, and conclusion of fact contained in the Board's proposed findings of fact, proposed conclusions of law, and proposed order, and set forth under the heading "findings of fact," in the same manner as if each and every one of such findings, statements, and conclusions of fact were separately set forth herein and each made the subject of a separate and distinct exception. Preserving again each and all of its exceptions as above noted, the respondent, upon the grounds that they, each and all, are not supported by the evidence nor by the record herein, excepts separately to each and all of the following of the Board's ultimate findings of fact, to wit:

(a) That the respondent has dominated and interfered with the formation and administration of the Plan of Employee Representation at the Massillon plant, and of its successors, the Employees' Representative Association and the Independent Association of Republic Employees, and has contributed financial and other support to them (pp. 10-11, inc.);

(b) That the respondent laid off Peter Mouyios (Massillon, Ohio) because of his failure to join the Independent Association of Republic Employees (Massillon, Ohio) (p. 11);

(c) That the respondent (Massillon, Ohio) shut down its mills and locked out its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the Union, and thereby discriminated against its employees in regard to hire and tenure of employment

and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Board Act (p. 21);

(d) That the Back-to-Work Committee (Massillon, Ohio) was in reality conducted from behind the scenes by respondent and the Law and Order League and was a creature of the respondent (p. 29);

(e) That the respondent was responsible for the disturbance and riot at Massillon, Ohio on July 11, 1937 (p. 70);

(f) That the respondent dominated and interfered with the formation and administration of the Plan of Employee Representation. (Central Alloy District), Canton Works, and contributed financial and other support to it (p. 71);

(g) That respondent dominated and interfered with the administration of the Plan of Representation of Employees at its tin plate mill (Canton, Ohio) and has contributed financial and other support to it (p. 72);

(h) That Victor Arias was discharged by the respondent for the reason that he joined and assisted the Union (p. 72);

(i) That the respondent shut down its tin plate mill at Canton and locked out almost all of its employees for the purpose of intimidating and coercing them not to join or to discontinue their membership in the Union, thereby discriminating against its employees with respect to hire, tenure of employment and interfered with, restrained and coerced its employees in the exercise, of the right guaranteed in Section 7 of the National Labor Relations Act (p. 74);

(j) That the respondent dominated and interfered with the formation and administration of the Employees' Representative Association (Canton, Ohio) and has contributed financial and other support to it (p. 76);

(k) That the respondent dominated and interfered with the formation and administration of the Steel Workers Union of America (Canton, Ohio) and has contributed support to it (p. 77);

(l) That Mike Ugranovich was discharged by the respondent not for his alleged intoxication but because he joined and assisted the Union (p. 79);

(m) That Will S. Wright was laid off by the respondent on April 27, 1937 because he had joined or was suspected of having joined the Union (p. 80);

(n) That Sabri Shaban was laid off on April 27, 1937 by the respondent because he was suspected of having joined the Union (p. 81);

(o) That the respondent dominated and interfered with the formation and administration of the Plan of Employee Representation at its Youngstown District and has contributed financial and other support to it (p. 83);

(p) That the closing of the foundry at Youngstown by the respondent was a step by the respondent in its continued efforts to check increasing Union organization (p. 85);

(q) That respondent interfered with the formation and administration of the Employee Representation Plan and the Independent Federation of Republic Employees, Youngstown District (p. 91);

(r) That Harry Rigby was refused reinstatement

by the respondent because of his membership and activity in the Union (p. 91);

(s) That John Lazar was refused reinstatement by the respondent because of his connection with the Union and of his activity in the strike (p. 92);

(t) That Michael Krill was refused reinstatement by the respondent because of his connection with the Union and his assistance to the Union during the strike (p. 92);

(u) That Balare Chismus was refused reinstatement by the respondent because of his affiliation with the Union and his assistance to the Union during the strike (p. 93);

(v) That William A. Haren was refused reinstatement by the respondent because of his connection with the Union and his activity in the strike (p. 93);

(w) That Charles Neverdusky was refused reinstatement by the respondent because of his connection with the Union, his assistance to the Union during the strike and his filing a charge with the Board (p. 94);

(x) That Anthony Martin De Long was refused reinstatement by the respondent because of his connection with the Union and his assistance to the Union during the strike (p. 94);

(y) That the respondent dominated and interfered with the formation and administration of the Plan of Employee Representation, Warren District, and contributed financial and other support to it (p. 95);

(z) That the respondent dominated and interfered with Employees' Independent Association, Warren District, and contributed support to it (p. 99);

(aa) That Richard Green was refused reinstatement by the respondent because of his connection with the Union and his assistance to the Union during the strike (p. 99);

(bb) That Hallie Philip Hite was refused reinstatement by the respondent because of his connection with the Union and his activity in the strike (p. 100);

(cc) That the respondent dominated and interfered with the formation and administration of the Plan of Employees' Representation at its Cleveland District (p. 101);

(dd) That Thomas Cikah was discharged by the respondent because of his membership and activity in the Union (p. 102);

(ee) That John Popik was discharged by respondent because of his membership in the Union (p. 102);

(ff) That Frank Pirichy was discharged by respondent because of his Union membership and activity (p. 103);

(gg) That George Troyanovich was discharged by the respondent because of his membership in the Union (p. 104);

(hh) That Michael Naletrich was discharged by the respondent because of his membership and activities in the Union (p. 105);

(ii) That Fred Korecky was discharged and refused reinstatement by the respondent until shortly before the strike because of his affiliation with the C. I. O. (p. 106);

(jj) That John Exall was discharged by the respondent because of his membership in the Union (p. 108);

(kk) That John Petak was laid off by the respondent because of his membership in the Union (p. 109);

(ll) That Mathew Babich was laid off by the respondent because of his Union membership (p. 109);

(mm) That Wilbert Neuman was discharged by respondent because of his membership in the Union (p. 110);

(nn) That Gaetano Armeli was discharged by the respondent because of his Union membership (p. 110);

(oo) That the respondent dominated and interfered with the formation and administration of Employees' Representative Association (Cleveland Plant) (p. 113);

(pp) That respondent dominated and interfered with the formation and administration of the Central Council of Employee Representatives and has contributed financial and other support to it (p. 114);

(qq) That by its acts, the respondent served final notice that it was prepared to go to extreme lengths to destroy the Union and to deny to its employees the rights guaranteed in the Act; that the Union called the strike, not without cause or justification, but because no other course remained open to

it; that unfair labor practices on the part of the respondent, culminating in a lockout on May 20, had placed the Union in a position where it had to fight for its life or be destroyed; that the respondent, not the Union, had chosen the way of industrial strife.

(rr) That the fundamental cause of the strike and a substantial factor in its precipitation on May 25th and May 26th was a long series of unfair labor practices by the respondent (p. 116);

(ss) That the activities of the respondent occurring in connection with the operations of the respondent have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and disturbing commerce and the free flow of commerce (p. 116).

21. Respondent excepts to the Board's proposed order in so far as it relates to or is based upon the strike, upon the ground that the Board has no jurisdiction to make any order whatsoever relating to the strike, or matters and things based upon or growing out of the strike, due to the fact that the evidence herein discloses without dispute that the strike was caused solely because the respondent refused to sign the proposed contract presented by the Steel Workers Organizing Committee, such refusal upon respondent's part not constituting an unfair labor practice under the terms of the National Labor Relations Act (as the Board itself expressly finds, p. 116) and there being no current labor dispute here involved.

22. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) by which respondent is ordered by the Board to reinstate strikers formerly employed by the respondent, including strikers specifically named or designated in the complaint

and strikers not so named or designated, upon the ground that the evidence herein discloses without dispute that the strike was wholly unlawful upon the part of the said strikers, and was called by reason of the refusal of the respondent to sign the contract presented to it by the Steel Workers Organizing Committee, such refusal not constituting an unfair labor practice under the terms of the National Labor Relations Act (as the Board itself expressly finds, p. 116) and there being no current labor dispute herein involved.

23. Respondent excepts to the Board's proposed order upon the ground that the Board should have dismissed the complaint herein upon the ground that the evidence herein disclosed that the alleged acts of the respondent complained of as constituting alleged unfair labor practices in violation of the National Labor Relations Act did not occur in interstate or foreign commerce and did not have a direct bearing thereon nor impede the flow thereof, all as appears in the evidence herein.

24. Respondent excepts to the Board's proposed order upon the ground that the Board should have dismissed the complaint herein because the evidence herein discloses that the strikers, individuals, groups and organizations, in whose behalf the Steel Workers Organizing Committee purported to act in filing the charges herein with the Board, and on whose behalf the complaint was filed, were guilty of many and repeated wholly unprovoked and unjustifiable acts and deeds of violence, coercion and intimidation against the respondent and its employees, of such a character as to deprive those who filed the charges aforesaid of any right so to do, and to require the Board to dismiss the complaint herein predicated upon such charges.

25. Respondent excepts to the Board's proposed

order (Sections 2(f) and 2(g)) in so far as it orders respondent to reinstate, upon application, to their former positions of employment by the respondent, strikers not named or specifically designated in the complaint as having been unlawfully or improperly discharged or discriminated against by the respondent, upon the ground that no issue as to them is tendered or raised by the complaint herein or by the issues joined thereon, and the respondent has never been accorded or offered a hearing nor the opportunity of making its defense as to the right of said strikers to be so reinstated, the proposed order of the Board in this regard constituting a denial of due process of law to the respondent in violation of the Fifth Amendment to the Constitution of the United States.

26. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) by which respondent is ordered to reinstate, upon application, to their former positions of employment by the respondent, strikers formerly employed by the respondent, who, as the evidence herein discloses, have heretofore voluntarily quit their positions of employment by the respondent, upon the ground that said portion of the Board's proposed order is contrary to law and not supported by the evidence herein and constitutes a denial to the respondent of the right of liberty of contract as guaranteed to respondent by the Fifth Amendment to the Constitution of the United States.

27. Respondent excepts to that portion of the Board's proposed order by which respondent is ordered to reinstate, upon application, to their former positions of employment by the respondent, certain strikers formerly employed by the respondent notwithstanding the fact that said strikers had committed acts of violence and lawless conduct in connection with the strike, and had

either been convicted of or pleaded guilty to criminal charges, based upon such acts and conduct, made against them in the courts of Ohio, as follows, to wit: Assault and Battery, a misdemeanor, 12; Rioting, Assembling together to do an unlawful act, a misdemeanor, 67; carrying concealed weapons, a felony, 9; interfering with and obstructing railway tracks, a felony, 5; malicious destruction of property to the value of $50.00, 6; upon the ground that this portion of said proposed order is contrary to law. And respondent excepts to that portion of the Board's proposed order by which respondent is ordered to reinstate Balare Chismus and John Exall, specifically named in the complaint, notwithstanding the fact that the evidence herein discloses that they pleaded guilty in the Courts of Common Pleas of Mahoning County and Cuyahoga County, respectively, to the offense of assault and battery, committed in connection with the strike.

28. Respondent excepts to that portion of the Board's proposed order by which respondent is ordered to reinstate, upon application, to their former positions of employment by the respondent, certain strikers formerly employed by the respondent notwithstanding the fact that said strikers, nine in number, entered pleas of guilty in the United States District Court for the Northern District of Ohio, Eastern Division, to the offense of impeding the United States mails.

29. Respondent excepts to the proposed order of the Board, in so far as it relates to respondent's Youngstown, Warren and Niles plants, upon the ground that said proposed order does not give weight and consideration to relevant and competent evidence offered by the respondent at the hearing herein, but excluded by the Trial Examiner and the Board, tending to prove continued, concerted, wholly unprovoked and unlawful acts

of conduct upon the part of strikers, pickets and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, consisting of unlawful picketing, unlawful assemblage, riot, violence and general lawless conduct in and about the respondent's Youngstown, Warren and Niles plants, said evidence being based upon the proffered testimony of approximately 75 witnesses and being embodied and described in detail in respondent's offer to prove, marked its Exhibit 50, found in the record herein.

30. Respondent excepts to the proposed order of the Board in so far as it relates to respondent's Cleveland plants, upon the ground that said proposed order does not give weight and consideration to relevant and competent evidence offered by the respondent at the hearing herein, but excluded by the Trial Examiner and the Board, tending to prove continued, concerted, wholly unprovoked and unlawful acts of conduct upon the part of strikers, pickets and persons affiliated with the Steel Workers Organizing Committee and Committee for Industrial Organization, consisting of unlawful picketing, unlawful assemblage, riot, violence and general lawless conduct in and about the respondent's Cleveland plants, said evidence so offered and so excluded being based upon the proffered testimony of approximately 200 witnesses and being embodied in and described in detail in respondent's offer to prove, marked its Exhibit 64, found in the record herein.

31. Respondent excepts to the Board's proposed order in so far as it relates to the respondent's Youngstown, Warren, Niles and Cleveland plants, upon the ground that the Trial Examiner erred at the hearing herein (his ruling being affirmed by the Board in its proposed order), in refusing to permit respondent to

call to the witness stand, each separately and individually, and examine and question, each separately and individually, approximately 75 witnesses from the Youngstown, Warren and Niles districts, and 200 witnesses from the Cleveland district, whose evidence, if received, would have tended to prove unlawful conduct upon the part of pickets, strikers and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization.

32. Respondent excepts to that part of the Board's proposed order which orders the respondent to cease and desist from certain specified acts and conduct with relation to certain alleged labor organizations, upon the ground that at the hearing the Trial Examiner erred (his ruling being affirmed by the Board in its proposed order), in excluding competent, admissible and relevant evidence offered by the respondent as follows to wit: that approximately 2000 of respondent's employees at its Massillon, Ohio, plants did not wish to go out on a strike but did wish to continue at work, and that they signed the back-to-work petition at Massillon and application cards for membership in the Independent Association of Republic Employees, an independent labor organization at Massillon, of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents; that approximately 2500 of its employees at its Canton, Ohio, plants did not wish to go out on a strike but did wish to continue at work, and that they signed application cards for membership in the Steel Workers of America, at Canton an independent labor organization, of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents; that approximately 2900 of re-

spondent's employees at its Youngstown, Ohio, plants did not wish to go out on a strike, but did wish to continue at work and that they signed a back-to-work petition of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents, and that approximately 1900 of respondent's employees at its Youngstown plants signed application cards for membership in the Independent Federation of Republic Employees, an independent labor organization at Youngstown, of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents; that approximately 2000 of respondent's employees at its Warren and Niles plants did not wish to go out on a strike, but did wish to continue at work, and that they signed application cards for membership in the Employees Independent Association, an independent labor organization, of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents; that approximately 2500 of the respondent's employees at its Cleveland plants did not wish to go out on a strike, but did wish to continue at work. All of the evidence so offered by the respondent, and excluded, is described in offers to prove found in the record.

33. Respondent excepts to that part of the Board's proposed order (Sections 2(b), 2(f) and 2(g)), by which respondent is ordered, subject to specified exceptions, to reinstate, upon application, to their former positions of employment by the respondent, all strikers formerly employed by the respondent, upon the ground that the evidence and offers to prove by the respondent establish the fact that said strikers are not entitled to reinstate-

ment because they, acting separately and in concert, have committed in connection with the strike at various plants of the respondent, many and repeated wholly unlawful, unprovoked and unjustifiable deeds and acts of violence, coercion and intimidation against the respondent and its employees. And upon the same ground as just above stated, respondent excepts to that part of the Board's proposed order by which respondent is ordered to reinstate strikers who are specifically named or specifically designated in the complaint herein.

34. Respondent excepts to the Board's proposed order and to each and every separate order therein set forth, upon the ground that said proposed order and said separate orders are not properly based upon the Board's own proposed findings of fact and its own proposed conclusions of law, even if (as the respondent avers is not the fact) said proposed findings of fact are supported by the evidence and said proposed conclusions of law are correct statements of law.

35. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order, upon the ground that Article II, Section 38-d of the National Labor Relations Board Rules and Regulations, Series 1, as amended, upon which the Board relies in making and issuing said proposed findings of fact, proposed conclusions of law and proposed order, does not, if properly construed, confer upon or vest in the Board any jurisdiction, authority or power whatsoever, to make said proposed findings of fact, said proposed conclusions of law and said proposed order. And, in support of this exception, the respondent avers that if Article II, Section 38-d of the National Labor Relations Board Rules and Regulations, Series 1, as amended, is construed or interpreted as conferring upon or vesting in the Board any jurisdiction, power or authority whatso-

ever to make and issue said proposed findings of fact, proposed conclusions of law and proposed order, then, in that event, said Section aforesaid is unconstitutional and void in that it denies to the respondent due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

36. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order, upon the ground that the National Labor Relations Act does not, if properly construed, confer upon or vest in the Board any jurisdiction, authority or power whatsoever to make said proposed findings of fact, said proposed conclusions of law and said proposed order. And, in support of this exception, the respondent avers that if the National Labor Relations Act is construed or interpreted as conferring upon or vesting in the Board any jurisdiction, power or authority whatsoever to make and issue said proposed findings of fact, proposed conclusions of law and proposed order, then, in that event, said Act aforesaid is unconstitutional and void, in that it denies to the respondent due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

37. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order, upon the ground that respondent was not offered, as to the charges made against it in the complaint, a hearing in accordance with the usual and accepted rules of procedure and the law of the land, and was denied due process of law, in violation of the Fifth Amendment to the Constitution of the United States in that: The Trial Examiner designated by the Board (whose rulings on motions and objections to the admission of evidence are affirmed by the Board in its proposed

order, p. 3) displayed, throughout the hearings before him, a distinct bias and prejudice in favor of the strikers, the Steel Workers' Organizing Committee and the Committee for Industrial Organization, in whose behalf the complaint herein was filed, and against the respondent; arbitrarily and capriciously permitted counsel for the Board to introduce hearsay evidence and wholly inadmissible evidence prejudicial to the respondent and in no way related to the issues here involved; unduly and arbitrarily restricted the introduction of competent and relevant evidence in behalf of the respondent and prevented the respondent from offering and presenting its defense to the charges made against it; attempted to lecture and intimidate the respondent's witnesses; and in other respects and particulars denied to the respondent a fair and impartial hearing, all as appears in detail in the respondent's exceptions to the rulings of the Trial Examiner at the hearing before him.

38. Respondent excepts to that portion of the Board's proposed order by which respondent is ordered to withdraw recognition from the Plan of Employees' Representation and other labor organizations and to completely disestablish said labor organizations as employee representatives for specific purposes, including the presentation of grievances to respondent (Order 2-a, p. 123), on the ground that this portion of the Board's proposed order is beyond the scope of the jurisdiction and power constitutionally conferred upon the Board by the National Labor Relations Act, it being based upon those provisions of said Act which purport to confer upon the Board jurisdiction and power to require an employer (here, the respondent) to take such affirmative action as will effectuate the policies of the Act, which portion of said Act is unconstitutional and therefore void, as being an attempt by Congress to delegate, without fixing def-

inite rules or standards to be followed by the Board, legislative power to the Board, contrary to Article I, Section 1, of the Constitution of the United States, which vests all legislative powers in the Congress of the United States.

39. Respondent excepts upon the grounds stated in exception 38, to that portion of the Board's proposed order (Order 2-h, p. 124), by which the respondent is ordered to post in conspicuous places in its plants and maintain for a period of at least sixty days, notices to its employees stating that it will cease and desist from certain practices, and that recognition is withdrawn from the labor organizations named in the order and that they have been completely disestablished as employee representatives; and upon the further ground that it requires the respondent to admit having engaged in unfair labor practices, which it disclaims.

40. Respondent excepts to the action of the Board, as embodied in its findings that respondent has engaged in unfair labor practices affecting interstate commerce, and in making an order based upon such findings upon the ground that the National Labor Relations Act, in so far as it seeks to authorize the Board to make such findings and base an order thereon requiring the respondent to cease and desist from such practices, to reinstate former employees with or without back pay, and to take such other affirmative action as will effectuate the policies of the Act, is unconstitutional and therefore void, as being an attempt on the part of Congress to confer judicial power upon the National Labor Relations Board, contrary to Article III, Section 1, of the Constitution of the United States.

41. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) which, subject to specified exceptions, requires respond-

ent to place those of its former employees who went out on a strike and may hereafter apply for reinstatement pursuant to the Board's order, upon a preferential list, and to give them employment when available in any of the respondent's plants, regardless of their previous places of employment, before other employees are hired, upon the ground that said portion of the Board's order is contrary to law, not supported by the evidence, and wholly beyond the jurisdiction, authority and power of the Board.

42. Respondent excepts to the action of the Board in including among the respondent's plants referred to in the respondent's exception 41, plants of the respondent which it has acquired since the date of hearing of the evidence herein from its subsidiaries, or otherwise, or opened since said date, upon the ground that such action by the Board is contrary to law, is not supported by the evidence, and is wholly beyond the jurisdiction, authority and power of the Board, and, upon the further ground, that no issue or question whatsoever was presented to or determined by the Board or Trial Examiner at the hearing and taking of evidence herein, relating in any manner whatsoever to plants of the respondent acquired or opened by the respondent since the date of the hearing of evidence herein, or to the respective rights, duties and liabilities of the respondent and the striking employees with relation to such plants so acquired or opened or employment therein.

43. Respondent excepts to that portion of the Board's order (Sections 2(b), 2(f), and 2(g)) which requires the respondent to dismiss from its employment employees hired by the respondent since the commencement of the strike and now employed by it, so as to make places for the reinstatement of strikers, upon the ground that said portion of the Board's proposed order is contrary to

law, not supported by the evidence, and wholly beyond the jurisdiction and authority of the Board.

44. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) which requires the respondent, subject to specified exceptions, to reinstate, upon application, former employees of the respondent who went out on strike, and to pay such employees, if, upon application by them, reinstatement by the respondent is not granted, altogether regardless of whether such employees have lost their status as employees of the respondent by the doing of acts furnishing good cause for their discharge or non-reinstatement or by having obtained other employment substantially equivalent to their former employment by the respondent, or otherwise, upon the ground that said portion of the Board's proposed order is contrary to law. not supported by the evidence, and wholly beyond the jurisdiction and authority of the Board.

45. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) which requires respondent, subject to specified exceptions, to reinstate, upon application, its former employees who went out on strike, without fixing any time limit within which application for reinstatement by such former employees must be made nor defining the procedure to be followed in such cases, upon the ground that said portion of the Board's proposed order is so vague, uncertain and indefinite in character as to have no legal effect whatsoever, and as not to impose any legal obligation upon the respondent, and is contrary to law, not supported by the evidence, and wholly beyond the jurisdiction and authority of the Board.

46. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g))

which orders the respondent, subject to specified exceptions, to reinstate, upon application, certain of its former employees who went out on strike, notwithstanding the fact that the evidence herein discloses that after the various plants of the respondent had resumed operations, said former employees, with knowledge in the premises, failed to return to work or to attempt so to do, and had never asked that they be reemployed in their former positions by the respondent, upon the ground that said portion of the Board's proposed order is contrary to law, not supported by the evidence, and wholly beyond its jurisdiction and authority.

47. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) by which respondent is ordered, subject to specified exceptions, to reinstate, upon application, its former employees who went out on strike, notwithstanding the fact that, upon the evidence herein and additional competent and relevant evidence sought to be introduced by the respondent, the strike has been heretofore, in law and in fact, finally concluded and terminated and the aforesaid former employees of the respondent have ceased to have any legal or factual status as employees of the respondent, upon the ground that said portion of the Board's proposed order is contrary to law, not supported by the evidence, and beyond the jurisdiction, power and authority of the Board.

48. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order, upon the ground that, in making and issuing them, the Board failed to take into consideration additional competent and relevant evidence in behalf of the respondent, permission to introduce which was prayed for by the respondent in motions filed with the Board for that purpose and by the Board denied.

49. Respondent excepts to the Board's proposed order, and to each and every portion thereof, and particularly excepts to those portions thereof (Sections 2(b), 2(f) and 2(g)) by which the respondent is ordered, subject to specified exceptions, to reinstate strikers, upon application, and, in order to make places for them, to dismiss employees hired since the strike commenced, and under certain conditions to place strikers upon a preferential list, and (Section 2(a)) to disestablish and discontinue dealing with certain labor organizations, upon the ground that the said order and each and every portion thereof, and particularly the portions just hereinbefore specifically described, constitute an arbitrary and gross abuse of discretion upon the part of the Board and do not tend in any manner whatsoever to effectuate the policies of the National Labor Relations Act, but tend to defeat them.

50. Respondent excepts to the Board's proposed finding of fact that the fundamental cause of the strike and a substantial factor in its precipitation on May 25 and May 26, 1937, was a long series of unfair labor practices upon the part of the respondent (p. 116), and to that portion of the Board's proposed findings of fact, proposed conclusions of law and proposed order, relating to "causes of the strike" (pp. 114-116, inc.), and to each and every portion of the Board's order based upon said findings and statements aforesaid, upon the ground that there is a total, absolute and fatal variance between the Board's said findings and statements and that portion of the complaint wherein the unfair labor practices of the respondent alleged to have caused or contributed to cause the strike are set forth and described. (See complaint, paragraphs 3-15, inc.)

51. Respondent excepts to that portion of the Board's proposed findings of fact, proposed conclusions of law and

proposed order, in which, in substance, the Board states as its conclusion that respondent is estopped by reason of its own alleged violence and lawless conduct, to assert that relief should be denied the members of the Steel Workers Organizing Committee and the strikers because of their having committed acts of violence and lawless conduct, upon the ground that said statement and conclusion are contrary to law, not supported by the evidence herein, and beyond the jurisdiction of the Board.

52. Respondent excepts to the proposed finding of the Board that the Steel Workers Organizing Committee and the Amalgamated Association of Iron, Steel and Tin Workers of North America are each and both labor organizations, upon the ground that said finding, in each respect, is not supported by the evidence nor by the record herein, and upon the further ground that the Board's own proposed findings of fact, proposed conclusions of law and proposed order contains the following statement, to wit:

"II. The Union

"While the record contains no detailed evidence relating to structure and function of the Steel Workers Organizing Committee and the Amalgamated Association of Iron, Steel and Tin Workers of North America, we have found upon numerous occasions in other cases, and the record as a whole in this case makes clear, that these organizations are labor organizations affiliated with the Committee for Industrial Organization." (p. 5.)

53. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order, upon the ground that the Board had no jurisdiction whatsoever under the National Labor Relations Act, the National Labor Relations Board Rules and Regulations (in-

cluding Article 2, Section 38(d), upon which the Board relies), or otherwise, having voluntarily set aside its decision and order of April 8, 1938, to make and issue, as it here seeks to do, proposed findings of fact, proposed conclusions of law and a proposed order which are identical in all substantial respects with the Board's original findings of fact, conclusions of law and order, in an attempt by the Board to regularize the proceedings herein and its action in making and issuing its decision and order of April 8, 1938 without affording to respondent a hearing as to the charges made against respondent in the complaint herein; and in support of this exception the respondent avers that said attempt by the Board so to regularize the proceedings herein and its action in making and issuing its original decision and order herein does not constitute in law or in fact the taking of further proceedings by the Board in a manner authorized or sanctioned by the National Labor Relations Act, the National Labor Relations Board Rules and Regulations (including Article 2, Section 38 (d), upon which the Board relies), or otherwise.

54. Respondent excepts to that portion of the Board's proposed order (Sections 2(b), 2(f) and 2(g)) by which respondent is ordered, subject to specified exceptions, to reinstate, upon application, former employees who went out on strike, upon the ground that said portion of the Board's proposed order is contrary to law, not supported by the evidence and beyond the jurisdiction of the Board, in that the evidence herein wholly fails to establish that the said strikers, or any of them, went out on a strike or ceased work as employees of the respondent in consequence of or in connection with any current labor dispute or because of any unfair labor practice upon the part of the respondent.

55. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed

order, upon the ground that it will in its operation and effect deprive the respondent of the right to meet, counsel and advise with labor organizations of its own employees, and the members thereof, even if such meetings or conferences be requested by them; the rights through its officers, management and supervisory agents to discuss freely matters involving employment and having relation to wages, hours and working conditions, and the right to express freely, orally or in writing, its views and opinions concerning labor organizations and the duty or obligation of any of its own employees to become members thereof; thereby abridging the respondent's freedom of speech, as is guaranteed to it by the First Amendment to the Constitution of the United States.

56. The respondent excepts to the Board's proposed order upon the ground that the National Labor Relations Act, as construed and applied by the Board as proposed herein, is unconstitutional and void in that it denies to the respondent due process of law and freedom of contract in violation of the Fifth Amendment to the Constitution of the United States, and freedom of speech in violation of the First Amendment to the Constitution of the United States, and in that it seeks to delegate to the Board, an administrative body, the right to exercise legislative power in violation of Article I, Section 1 of the Constitution of the United States, and judicial power in violation of Article III, Section 1 of the Constitution of the United States.

57. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that the Board, having set aside its order of April 8, 1938, if the National Labor Relations Act or any provision thereof gives or purports to give to the Board any jurisdiction, power or authority thereafter to take any further proceedings herein, said act or part thereof

giving or purporting to give such jurisdiction, power and authority, fails to state what further proceedings or orders the Board may take or make in such contingency, and fails to set up any standards whatsoever by which it can reasonably be determined what further proceedings or orders in such contingency the Board may take or make, and is therefore invalid and in violation of Section 1 of Article I of the Constitution of the United States in that it constitutes an unauthorized and improper delegation to the Board of powers vested exclusively in Congress and the legislative branch of the Government.

58. Respondent excepts to the finding and conclusion of the Board that the so-called back-to-work movements are labor organizations within the meaning of the National Labor Relations Act, upon the ground that said finding is contrary to law and not supported by the evidence.

59. Respondent excepts to the Board's proposed findings of fact, proposed conclusions of law and proposed order upon the ground that, in making and issuing them, the Board treated, and relied upon, as evidence, matters and things outside of the hearing of evidence and the record herein.

RESPONDENT'S REQUEST TO THE BOARD FOR FURTHER INFORMATION

Respondent, so that it may adequately and properly protect the rights guaranteed to it in this case by the Constitution of the United States, the National Labor Relations Act, and any other laws applicable to this proceeding, requests the Board and the individual members thereof to give to the respondent information pertinent to this case, as follows, to wit:

(a) Information as to whether the members of the Board, or any of them, read and examined the evidence

and exhibits offered and introduced at the hearing of this case before the Board and the Trial Examiner herein designated by the Board, before the Board's decision and order of April 8, 1938, was made and issued by the Board.

(b) Information as to whether the Board, or any of the members thereof, read and examined said evidence and exhibits before making and issuing the Board's order of July 8, 1938, directing issuance of proposed findings of fact, proposed conclusions of law and proposed order.

(c) Information as to whether the Board, or any of the members thereof, prepared the findings of fact, the decision and order of the Board, and the findings of fact and conclusions of law and order therein contained, made and issued by the Board on April 8, 1938.

(d) Information as to whether the members of the Board, or any of them, prepared the proposed findings of fact, proposed conclusions of law and proposed order of the Board, issued on July 8, 1938.

(e) Information as to in what manner and by whom the Board's decision and order of April 8, 1938, and its proposed findings, proposed conclusions of law and proposed order of July 8, 1938, were prepared, if not prepared by the Board or a member thereof.

The respondent, in connection with this request upon the Board for information, states that it reserves unto itself the right to file further exceptions to the Board's proposed findings of fact, proposed conclusions of law and proposed order of July 8, 1938, and to take such other steps as it may deem proper and expedient in the premises, in the event that such action by respondent, is, in its judgment or that of its counsel, justified and required by any information given by the Board pursuant to the respondent's request therefor, as above set forth, or by a failure upon the part of the Board to give to the respondent the information requested.

EXCEPTIONS TO THE RULINGS OF THE BOARD AND THE TRIAL EXAMINER UPON MOTIONS, OBJECTIONS AND OFFERS TO PROVE AT THE HEARING OF EVIDENCE HEREIN, SAID EXCEPTIONS BEING BASED UPON THE GROUNDS APPEARING IN THE RECORD HEREIN.

WASHINGTON HEARING BEFORE BOARD.

1. (R. p. 4) Respondent excepts to the action of the Board in compelling respondent to proceed to a hearing in this case upon only four and one-half days' notice and before the time granted under the rules of the Board to respondent for the filing of an answer.

2. (R. p. 4) Respondent excepts to the denial by the Board of the motion of respondent for a continuance to enable respondent to prepare for the hearing.

3. (R. p. 4) Respondent excepts to the denial by the Board of respondent's motion that proceedings be conducted in Cleveland, Ohio.

4. (R. p. 7) Respondent excepts to the Board's denial of the request of respondent to require counsel for the Board to state the circumstances which made it necessary to proceed with the hearing at that time and in Washington.

5. (R. p. 14) Respondent excepts to the denial by the Board of respondent's request for an exclusion and separation of witnesses.

6. (R. pp. 17 and 18) Respondent excepts to the overruling of respondent's objections to the testimony of the witness Switter, Chief of Police, Massillon, Ohio, and excepts to the admission of the testimony of the said Switter with reference to conversations with Carl Myers.

7. (R. pp. 20 and 21) Respondent excepts to the overruling of the objection of respondent, and to the admission of testimony of the witness Switter concerning rumors.

8. (R. p. 25) Respondent excepts to the overruling of the objection of respondent to the testimony of the witness Switter about reports concerning a riot.

9. (R. p. 26) Respondent excepts to the admission of the testimony of the witness Switter as to the cause of the riot.

10. (R. pp. 26 and 27) Respondent excepts to the admission of the testimony of the witness Switter as to the cause of the so-called small riot.

11. (R. p. 78) Respondent excepts to the admission, over respondent's objection, of the testimony of the witness Switter as to conversation with Ralph Peppard and Perry Angstadt, pertaining to an inquiry on their part as to whether the witness Switter intended to deputize Home Guards, and the suggestion that they take names off of a list which they had prepared for that purpose.

12. (R. p. 79) Respondent excepts to the admission, over respondent's objection, of Board's Exhibit 3, which purports to be a list of names submitted by Peppard and Angstadt to the witness Switter.

13. (R. p. 93) Respondent excepts to the admission, over respondent's objection, of Board's Exhibit 4, which purports to be a list of the names of men on the Massillon Police force prepared by the witness Switter.

14. (R. p. 104) Respondent excepts to the admission of testimony, over respondent's objection, calling for the conclusion of the witness Switter as to whether it would have been possible for him to have handled the strike situation in Massillon without bloodshed had he not been sub-

jected to pressure by certain individuals.

15. (R. p. 104) Respondent excepts to the admission of testimony of the witness Switter, over respondent's objection, wherein he was permitted to state that such pressure was brought on him continuously since the beginning of the strike.

16. (R. p. 105) Respondent excepts to the admission of testimony, over respondent's objection, of the witness Switter, wherein he stated that he had only testified as to the high lights of such pressure.

17. (R. p. 106) Respondent excepts to the admission of testimony, over respondent's objection, of the witness Switter, wherein, in a series of leading questions, he was asked to give his conclusions as to whether it was his purpose to avoid bloodshed and maintain peace during the strike, and whether he tried to put men on the police force who were neutral, and whether he would have been successful in carrying out these policies if pressure had not been exerted upon him.

18. (R. pp. 109 and 110) Respondent excepts to the Board's ruling in refusing respondent the right to inquire of the witness Switter, on cross examination, where he had been stopping in Washington.

19. (R. p. 110) Respondent excepts to the comment of Board's counsel, in the presence of the witness Switter, then being examined on cross examination by respondent's counsel, that witnesses, including the witness then being examined, had been subjected to sufficient pressure and should not be subjected to further pressure from respondent.

20. (R. p. 110) Respondent excepts to the Board's refusal to permit respondent's counsel to interrogate the witness Switter as to how long he expected to remain in Washington.

21. (R. pp. 212-214) Respondent excepts to the Board's ruling admitting testimony of the witness Hardman, over respondent's objection, given in answer to a series of questions in which the witness purported to relate a series of conversations with Case, Secretary of the Massillon Chamber of Commerce, and with one Lester, and particularly to the Board's ruling, in which this witness was permitted to state, over respondent's objection, what was alleged to have been told the witness by Lester of a conversation which Lester was said to have had with Carl Myers.

22. (R. pp. 219-222) Respondent excepts to the ruling of the Board in permitting the witness Hardman, over the objection of respondent, to answer a series of questions, wherein the witness Hardman related the details of a meeting which he had with Trades and Labor Council of the City of Massillon, at which, according to the witness, he gave the details of an imaginary interview with the Governor of the State of Ohio.

23. (R. p. 225) Respondent excepts to the Board's action in overruling respondent's motion to strike from the record, for the reasons therein stated, the testimony of the witness Switter, said motion relating to each conversation, each episode and each incident related by said witness.

24. (R. p. 231) Respondent excepts to the Board's ruling in refusing to permit respondent's counsel to inquire of the witness Switter, on cross examination, whether his family knew where he was at the time he was testifying before the Board in Washington, and whether the City of Massillon knew where he was at that time.

25. (R. pp. 232-245) Respondent excepts to the ruling of the Board in permitting the witness Hardman, over respondent's objection, to give the details of various conversations alleged to have been had by the witness with

different people representing the Law and Order League of the City of Massillon, the Chief of Police of the City of Massillon, the Mayor of the City of Massillon, representatives from the National Guard, including Col. Lawler, and citizens of the City of Massillon.

26. (R. pp. 246-247) Respondent excepts to the Board's ruling in permitting the witness Hardman to testify, over respondent's objection, concerning alleged conversations with one Linckenhely and with various officials of the City of Massillon and the City of Canton, respectively, concerning the back-to-work movement and concerning the matter of deputizing men as special police.

27. (R. pp. 248-250) Respondent excepts to the Board's ruling in permitting the witness Hardman, over respondent's objection, to give details of an alleged conversation with Messrs. Peppard and Angstadt concerning the selection of men for the special police force at Massillon.

28. (R. pp. 250-252) Respondent excepts to the Board's ruling permitting the witness Hardman, over respondent's objection, to testify concerning the details of an alleged meeting between the Law and Order League of the City of Massillon, the Mayor and Chief of Police of the City of Massillon, and the witness.

29. (R. p. 278) Respondent excepts to the Board's ruling in refusing to permit respondent's counsel to interrogate the witness Hardman as to whether his family had been able to communicate with him at the time he was in Washington preceding the hearing.

30. (R. p. 279) Respondent excepts to the Board's ruling in refusing to permit respondent's counsel to interrogate the witness Hardman as to whether the City of Massillon was able to communicate with him during the time he was in Washington prior to the hearing there.

31. (R. p. 279) Respondent excepts to the Board's ruling in refusing to permit respondent's counsel to interrogate the witness Hardman as to why he left Massillon so precipitately for Washington prior to the hearing.

32. (R. pp. 329-330) Respondent excepts to the Board's ruling permitting the witness Krier to testify, over respondent's objection, to the details of an alleged meeting at the Chamber of Commerce, Massillon, with the Chief of Police, the City Solicitor, the Service Director and citizens of Massillon.

33. (R. pp. 330-331) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, to the details of an alleged conference at the Onesto Hotel, Canton, between the witness and Carl Myers.

34. (R. pp. 331-332) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning the details of an alleged meeting with a group representing the Trades and Labor Council of the City of Massillon.

35. (R. pp. 332-333) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning a meeting with a back-to-work committee on or about June 21, 1937, at Massillon.

36. (R. pp. 333-334) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning an alleged conversation with Colonel Lawler of the Ohio National Guard.

37. (R. p. 336) Respondent excepts to the Board's ruling in denying the motion of respondent's counsel to strike from the record, for the reasons stated therein, the testimony of the witnesses, Hardman and Krier, as a whole,

and as to each and every conversation and episode related by them.

38. (R. pp. 337-338) Respondent excepts to the Board's ruling in admitting, over respondent's objection, Board's Exhibit 5, Board's Exhibit 6 and Board's Exhibit 7, purporting to be letters received by the witness Krier.

39. (R. p. 341) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning an alleged meeting with the Law and Order League of the City of Massillon on June 25, 1937, and the details of the conversation had at said meeting.

40. (R. p. 342) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning an alleged conference with Colonel Marlin of the Ohio National Guard on July 5, 1937.

41. (R. pp. 342-343) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning a conference with the Law and Order League of the City of Massillon on or about July 7, 1937.

42. (R. pp. 346-347) Respondent excepts to the Board's ruling in permitting the witness Krier to testify, over respondent's objection, concerning a meeting at the Y. W. C. A. in Massillon between certain officials of the City of Massillon, including the witness, and various citizens of the City of Massillon.

43. (R. pp. 351-352) Respondent excepts to the Board's ruling in denying the motion of respondent's counsel to strike from the record, for the reasons stated therein, the testimony of the witness Krier, in so far as it relates to episodes and conversations detailed by the witness, separately and collectively.

44. (R. pp. 354-362) Respondent excepts to the Board's ruling in permitting the witness Hardesty to testify, over respondent's objection, concerning the details of a riot in the City of Massillon on or about July 11, 1937, at or near the viaduct leading into the plant of respondent and at or near the headquarters of the C. I. O. in the City of Massillon.

45. (R. pp. 389-398) Respondent excepts to the Board's ruling in permitting the witness Beckner to testify, over respondent's objection, concerning the happenings and incidents in a certain riot at Massillon on the night of July 11, 1937.

46. (R. pp. 407-418) Respondent excepts to the Board's ruling in permitting the witness Meyer to testify, over respondent's objection, concerning the details of the witness's conduct and actions on the evening of July 11, 1937, prior to a riot at Massillon.

47. (R. pp. 434-444) Respondent excepts to the Board's ruling in permitting the witness Jones to testify, over respondent's objection, concerning the incidents and happenings involved in a riot on or about July 11, 1937, at or near the viaduct entrance of the plant of respondent and the C. I. O. headquarters in Massillon.

48. (R. p. 443) Respondent excepts to the Board's ruling in permitting the witness Jones to testify, over respondent's objection, as to whether he was given anything to eat in the Massillon City Jail on the day following the riot, at which time the witness was under arrest in the Massillon City Jail.

49. (R. p. 461) Respondent excepts to the ruling of the Board in permitting the witness Veto to testify, over respondent's objection, to an alleged conversation overheard by the witness between two individuals, one of whom

the witness asserted was a Bill Henderson; and respondent excepts to each and every part of the testimony of the witness upon this subject. (See general objection, page 542.)

50. (R. pp. 462-478) Respondent excepts to the ruling of the Board in permitting the witness Veto to testify, over respondent's objection, to the details and happenings involved in a certain riot on or about July 11, 1937, at or near the viaduct entrance to the respondent's Massillon plant and the C. I. O. headquarters in said city, and respondent excepts to each and every part of the testimony of the witness upon this subject. (See general objection, page 542.)

51. (R. p. 470) Respondent excepts to the ruling of the Board in admitting, over respondent's objection, Board's Exhibit No. 8, purporting to be a photograph of one Bill Henderson.

52. (R. pp. 489-505) Respondent excepts to the Board's ruling in the admission of the testimony of the witness Angelo relating to the alleged details of the arrest of the witness and his treatment during his confinement in the Stark County jail following his arrest, and respondent excepts to each and every part of the testimony of the witness upon this subject. (See general objection, page 542.)

53. (R. pp. 507-519) Respondent excepts to the admission by the Board of the testimony of the witness Conzas, wherein the witness purports to relate the alleged details concerning his arrest on the night of July 11, 1937, and subsequent confinement in Stark County Jail, and an alleged conversation at the time of his arrest with one Bill Henderson; and respondent excepts to each and every part of the testimony of the witness upon this subject. (See general objection, page 542.)

54. (R. pp. 520-542) Respondent excepts to the admission by the Board of the testimony of the witness Turkey, wherein the witness purports to relate the alleged details surrounding his arrest on the night of July 11, 1937, and subsequent confinement in the Stark County jail, and respondent excepts to each and every part of the testimony of the witness upon this subject. (See general objection, page 542.)

55. (R. pp. 543-558) Respondent excepts to the Board's ruling in admitting, over respondent's objection, the testimony of the witness Smith concerning the details of the execution of special policeman bonds at the respondent's Canton plant on or about July 5, 1937, and respondent excepts to each and every part of the testimony of the witness upon this subject.

56. (R. p. 553) Respondent excepts to the admission by the Board, over respondent's objection, of Board's Exhibit No. 9, purporting to be an application for a public official's bond of $5,000.00 or less.

57. (R. p. 555) Respondent excepts to the ruling of the Board in admitting, over respondent's objection, Board's Exhibit No. 10, consisting of two documents, one, a long printed page, and the other a small card with the words "private police commission" on top.

58. (R. p. 557) Respondent excepts to the admission by the Board, over respondent's objection, of Board's Exhibit No. 11, purporting to be an invoice made to respondent for the execution of certain special policeman bonds in the City of Canton and in the City of Massillon.

59. (R. pp. 559-565) Respondent excepts to the Board's ruling in admitting, over respondent's objection, the testimony of the witness Smith, wherein the witness testified concerning the execution of certain special policeman bonds in the City of Massillon on or about July 6,

1937, and the respondent excepts to each and every part of the testimony of the witness upon this subject.

60. (R. p. 565) Respondent excepts to the Board's ruling in admitting, over respondent's objection, Board's Exhibit No. 12, which purports to be a mimeographed blank form of the special policeman bond used in the City of Massillon.

61. (R. p. 567) Respondent excepts to the Board's ruling in admitting into the record, over respondent's objection, Board's Exhibit No. 13, (13-a and 13-b), which purports to be a record from the office of the witness Smith of the execution and issuance of certain special policeman bonds.

62. (R. pp. 567-568) Respondent excepts to the ruling of the Board in admitting into the record, over respondent's objection, Board's Exhibits Nos. 14-a and 14-b, which purport to be a carbon copy of a letter transmitting a certain indemnity agreement from the office of the witness to respondent.

63. (R. pp. 582-583) Respondent excepts to the ruling of the Board in overruling the motion of respondent, at the conclusion of the hearing at Washington, to strike from the record, for the reasons therein stated, the testimony of each and all of the witnesses who testified on behalf of the Board, beginning on page 1 of the record through page 583, inclusive, such motion being directed to each conversation, incident and episode detailed by each witness.

CANTON, OHIO HEARING BEFORE TRIAL EXAMINER.

64. (R. pp. 591-592) Respondent excepts to the ruling of the trial examiner in admitting the testimony of the witness Price, over respondent's exception, wherein

the witness purported to relate an alleged conversation with a C. I. O. organizer without showing any connection with respondent.

65. (R. p. 596) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike the answer of the witness Porter, wherein he purported to describe a lot of terrorism among the workers.

66. (R. pp. 598-599) Respondent excepts to the ruling of the trial examiner in admitting into evidence, over respondent's objection, testimony of the witness Porter concerning an alleged conversation with a Mr. Laughlin.

67. (R. p. 617) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to exclude from the record all the testimony of the witness Porter on the ground that the witness failed to connect respondent with any of the incidents described therein.

68. (R. p. 620) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike certain testimony of the witness Sweany, wherein the witness purported to detail certain conversations with unnamed individuals in the absence of respondent.

69. (R. p. 622) Respondent excepts to the ruling of the trial examiner in denying the application of respondent for a separation of witnesses and for an order excluding witnesses from the hearing until after they had testified.

70. (R. pp. 626-627) Respondent excepts to the ruling of the trial examiner in permitting the witness Sweany to detail, over respondent's objection, conversations with unnamed individuals whom the witness was contacting for the purpose of organization into the C. I. O.

71. (R. pp. 627-628) Respondent excepts to the ruling of the trial examiner in permitting the witness Sweany

to testify, over objection of respondent, concerning a conversation with an unidentified person, in which he expressed fear as to the witness coming to his house.

72. (R. pp. 629-630) Respondent excepts to the ruling of the trial examiner in permitting the witness Sweany to testify, over respondent's objection, to the details of his conversation in soliciting membership in C. I. O. of one Thomas Pastorious.

73. (R. p. 631) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike from the record all the testimony of the witness Sweany.

74. (R. p. 632) Respondent excepts to the ruling of the trial examiner in admitting into the record Board's Exhibits Nos. 16 and 17 purporting to be releases issued by a deputy sheriff of Stark County for two men by the names of Harold McAllister and Morris Long.

75. (R. pp. 635-636) Respondent excepts to the ruling of the trial examiner in permitting the witness Koellner to testify, over respondent's objection, to a conversation with one Deputy Ronk.

76. (R. p. 636) Respondent excepts to the ruling of the trial examiner in permitting the witness Koellner, over respondent's objection, to testify concerning an alleged conversation with McAllister and Long.

77. (R. p. 639) Respondent excepts to the ruling of the trial examiner in overruling the motion of respondent to strike from the record all the testimony of the witness Koellner.

78. (R. pp. 717-718) Respondent excepts to the ruling of the trial examiner in admitting into the record, over respondent's objection, Board's Exhibit No. 26, purporting

to be a pamphlet entitled "Employee Representation in the Iron and Steel Industry."

79. (R. pp. 758-759) Respondent excepts to the ruling of the trial examiner in permitting the witness Downard, over respondent's objection, to testify concerning a conversation with one Jim Doyle.

80. (R. p. 759) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike from the record the testimony of the witness Downard as to an alleged conversation with Doyle.

81. (R. p. 760) Respondent excepts to the ruling of the trial examiner in permitting the witness Downard to testify, over respondent's objection, to the details of an alleged conversation in January, 1937, between the witness and one Gene Thomas.

82. (R. pp. 761-764) Respondent excepts to the ruling of the trial examiner in permitting the witness Downard to testify, over respondent's objection, to the details of an alleged conversation between the witness and a Mr. Tebay.

83. (R. p. 764) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike from the record the testimony of the witness Downard in respect to an alleged conversation with a Mr. Tebay.

84. (R. pp. 764-766) Respondent excepts to the ruling of the trial examiner in permitting the witness Downard to testify, over respondent's objection, to an alleged conversation in May, 1937, between the witness and a Mr. Tebay, a Mr. Allen and a Mr. Geltz.

85. (R. p. 764) Respondent excepts to the ruling of the trial examiner in overruling the motion of respondent to strike the testimony of the witness Downard as to an

alleged conversation between the witness and a Mr. Tebay, a Mr. Allen and a Mr. Geltz.

86. (R. p. 782) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent's counsel to interrogate the witness Downard, on cross examination, as to the details of a torture chamber in Bandi's Hall, the C. I. O. headquarters in Canton during the strike.

87. (R. pp. 789-790) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to strike the answer of the witness Beckner as to an alleged conversation with a Mr. Horne in 1934.

88. (R. pp. 800-802) Respondent excepts to the ruling of the trial examiner in admitting, over respondent's objection, the testimony of the witness Beckner concerning an alleged conversation with one William Tebay in the early part of May, 1937.

89. (R. p. 802) Respondent excepts to the ruling of the trial examiner in denying the objection of respondent to strike the testimony of the witness Beckner as to a certain conversation with one Tebay in May, 1937.

90. (R. p. 812) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Beckner, on cross examination, as to whether he was under indictment in Youngstown, Ohio, for carrying concealed weapons.

91. (R. p. 828) Respondent excepts to the ruling of the trial examiner in permitting the witness Ugranovich to testify, over respondent's objection, concerning his alleged discharge from respondent's employ, in 1935.

92. (R. p. 841) Respondent excepts to the ruling of the trial examiner in permitting the witness Shaban to testify, over respondent's objection, as to an alleged conversation with a Mr. Hopkins.

93. (R. pp. 853-854) Respondent excepts to the ruling of the trial examiner in permitting the witness Wright to testify, over respondent's objection, as to a certain alleged conversation in 1922 between the witness and a Mr. Ake.

94. (R. pp. 854-855) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike all the testimony of the witness Wright relating to an alleged conversation between the witness and a Mr. Ake in 1922.

95. (R. p. 857) Respondent excepts to the ruling of the trial examiner in permitting the witness Wright to testify, over respondent's objection, as to an alleged conversation with one Williams.

96. (R. p. 859) Respondent excepts to the ruling of the trial examiner in permitting the witness Wright to testify, over the ojection of respondent, as to whether he attended safety meetings.

97. (R. pp. 861-862) Respondent excepts to the ruling of the trial examiner in permitting the witness Wright to testify concerning an alleged conversation between the witness and Martin Beckner and a Mr. Williams.

98. (R. pp. 875-876) Respondent excepts to the ruling of the trial examiner in permitting the witness Arias to testify, over respondent's objection, concerning an alleged conversation in April, 1937, between the witness and one Frank Geltz.

99. (R. pp. 887-888) Respondent excepts to the ruling of the trial examiner in permitting the witness Schwartz to testify, over respondent's objection, as to an alleged conversation with one Jim Davey in December, 1936.

100. (R. p. 888) Respondent excepts to the ruling of the trial examiner in permitting the witness Schwartz to

testify, over respondent's objection, to a further alleged conversation between the witness and one Jim Davey, alleged to have taken place in the restaurant at the Canton Tin Plate Division of respondent's plant.

101. (R. p. 892) Respondent excepts to the ruling of the trial examiner in permitting the witness Poorman to testify, over respondent's objection, as to why he attempted to keep secret from the company that he was a member of the C. I. O.

102. (R. pp. 893-894) Respondent excepts to the ruling of the trial examiner in permitting the witness Schwartz to relate, over respondent's objection, the details of an alleged conversation with one Thomas Pastorious, alleged to have taken place in January, 1937.

103. (R. pp. 900-901) Respondent excepts to the ruling of the trial examiner in permitting the witness Cameron to testify, over respondent's objection, as to an alleged conversation with one Dan Allen concerning the alleged solicitation of the witness by said Allen for membership in the Employees' Representative Plan.

104. (R. p. 913) Respondent excepts to the ruling of the trial examiner in permitting the witness Stokes to testify, over respondent's objection, as to the details of an alleged conversation on May 24, 1937, between the witness and one Gene Williams.

105. (R. pp. 915-916) Respondent excepts to the ruling of the trial examiner in permitting the witness Stokes to testify, over respondent's objection, concerning the details of an alleged conversation between the witness and one Williams.

106. (R. p. 919) Respondent excepts to the ruling of the trial examiner in permitting the witness Stokes to testify, over respondent's objection, concerning an alleged

conversation between the witness and one Garcia Epps.

107. (R. p. 920) Respondent excepts to the ruling of the trial examiner in permitting the witness Stokes to testify, over respondent's objection, concerning an alleged conversation between the witness and one Andy Bodizar.

108. (R. pp. 931-932) Respondent excepts to the ruling of the trial examiner in sustaining the motion of Board's counsel to strike from the record the testimony of the witness Stokes elicited on cross examination by respondent's counsel, concerning the arrest of the witness and the circumstances attendant thereon, such testimony commencing on page 929 and extending through to page 932, inclusive.

109. (R. p. 950) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent's counsel to interrogate the witness Ugranovich concerning his practice of laying off for several days around pay day.

110. (R. pp. 956-957) Respondent excepts to the ruling of the trial examiner in permitting the witness Cutshall to testify, over respondent's objection, to an alleged conversation between the witness and a Mr. Schnerly.

111. (R. pp. 966-967) Respondent excepts to the ruling of the trial examiner in permitting the witness Cutshall to testify, over respondent's objection, concerning an alleged meeting at which one William Dunn is alleged to have spoken.

112. (R. p. 976) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent's counsel to interrogate the witness Cutshall, on cross examination, concerning the treatment of one Dan Allen at Bandi's Hall.

113. (R. p. 981) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike

the testimony of the witness Cutshall as to group meetings and what occurred thereat.

114. (R. pp. 984-985) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the testimony of the witness Cutshall concerning a meeting held on or about May 20, 1937, attended by the witness and employees of respondent.

115. (R. p. 991) Respondent excepts to the ruling of the trial examiner in permitting the witness Cutshall to testify, over respondent's objection, as to whether a foreman could fire or discharge him.

116. (R. p. 992) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the testimony of the witness Cutshall concerning a meeting of employees of respondent addressed by one William Dunn.

117. (R. p. 998) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the testimony of the witness Rafaledes concerning his alleged detention in the Canton plant of respondent for several days following the commencement of the strike.

118. (R. p. 1007) Respondent excepts to the ruling of the trial examiner in refusing respondent the right to interrogate the witness Rafaledes, on cross examination, as to whether a great many men remained in the mill during the strike.

119. (R. p. 1009) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Rafaledes as to whether he refrained from leaving the plant during the strike because of the presence of a great number of pickets.

120. (R. p. 1010) Respondent excepts to the ruling of

the trial examiner in refusing respondent the right to interrogate the witness Rafaledes as to whether or not there was a great number of men in the Canton plant of respondent during the strike.

121. (R. p. 1021) Respondent excepts to the ruling of the trial examiner in denying respondent's objection to the testimony of the witness Cox concerning an alleged conversation with a Mr. Kelvey.

122. (R. pp. 1054-1055) Respondent excepts to the ruling of the trial examiner in permitting the witness Eckroad to testify, over respondent's objection, concerning an alleged conversation with one Dave Lewis.

123. (R. p. 1056) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the testimony of the witness Eckroad concerning an alleged talk with one Dave Lewis, an employee of respondent.

124. (R. p. 1057) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike further testimony of the witness Eckroad in respect to certain alleged conversations with one Dave Lewis.

125. (R. p. 1072) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Jordan, on cross examination, concerning how many men he signed up while acting as an organizer for the C. I. O.

126. (R. p. 1078) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Jordan, on cross examination, as to whether any other men in the mill at respondent's plant were working secretly for the C. I. O.

127. (R. pp. 1079-1080) Respondent excepts to the ruling of the trial examiner in precluding respondent from

interrogating the witness Jordan as to whether he made arrangements with one Frank Hardesty for an organizing job with the C. I. O.

128. (R. pp. 1080-1081) Respondent excepts to the ruling of the trial examiner in preventing respondent from interrogating the witness Jordan as to his whereabouts on the night of July 11, 1937.

129. (R. p. 1081) Respondent excepts to the ruling of the trial examiner wherein he sustained an objection by the Board to the following inquiry propounded by respondent to the witness Jordan on cross examination: "Well, were you there (Massillon) the night of the riot?"

130. (R. p. 1083) Respondent excepts to the ruling of the trial examiner wherein he refused to permit respondent to cross examine the witness Jordan as to whether he was in Youngstown, Ohio, when there was trouble there.

131. (R. p. 1092) Respondent excepts to the ruling of the trial examiner in denying respondent's objection to the testimony of the witness Morton as to conversations had with a Mr. Hayden Bright and a Mr. Lewis in respondent's Massillon plant.

132. (R. p. 1093) Respondent excepts to the ruling of the trial examiner in permitting the witness Jordan to relate, over respondent's objection, an alleged conversation with one Paul Irwin on or about May 20, 1937.

133. (R. p. 1094) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the testimony of the witness Morton that some of respondent's foremen had said the mill would be shut down before respondent would recognize the C. I. O.

134. (R. pp. 1094-1095) Respondent excepts to the ruling of the trial examiner in permitting the witness Morton

to testify, over respondent's objection, concerning a further alleged conversation on or about May 20, 1937, with a Mr. Lewis.

135. (R. pp. 1100-1101) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike a portion of the answer of the witness Morton appearing on p. 1100.

136. (R. pp. 1105-1106) Respondent excepts to the ruling of the trial examiner wherein he denied respondent the right to interrogate the witness Morton, on cross examination, as to whether the witness did not know that there was a committee of workmen known as the Appeals Committee.

137. (R. p. 1113) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Morton, on cross examination, as to whether he knew at the time of an alleged conversation that one Dave Lewis, to whom he was talking, was working.

138. (R. p. 1114) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Morton, on cross examination, as to whether anybody was working in the Massillon Plant of respondent on May 20, 1937, to the knowledge of the witness.

139. (R. p. 1116) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the answer of the witness Morton in reply to the first question on page 1116, on the ground that said answer was not responsive to the question.

140. (R. pp. 1119-1120) Respondent excepts to the ruling of the trial examiner in admitting, over respondent's objection, Board's Exhibit No. 49, purporting to be a written notice to the witness to return to work.

141. (R. p. 1120) Respondent excepts to the ruling of the trial examiner in permitting the witness Tahir to testify, over respondent's objection, as to the identity of the person signing a paper marked "Board's Exhibit No. 49" with the initials "C. S."

142. (R. p. 1121) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike Board's Exhibit No. 49.

143. (R. p. 1123) Respondent excepts to the ruling of the trial examiner in admitting, over respondent's objection, Board's Exhibit No. 50, purporting to be a notice in writing to the witness Tahir to return to work at respondent's plant.

144. (R. p. 1125) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike Board's Exhibit No. 49.

145. (R. p. 1129) Respondent excepts to the ruling of the trial examiner in permitting the witness Ebbert to testify over respondent's objection, concerning an alleged conversation which the witness claimed to have had with one Ralph Ebberly on or about July 12, 1937.

146. (R. pp. 1130-1131) Respondent excepts to the ruling of the trial examiner in receiving in evidence, over respondent's objection, Board's Exhibit No. 51, purporting to be an application card for membership in Independent Association of Republic Employees.

147. (R. p. 1131) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike an alleged conversation between the witness and one Ebberly.

148. (R. pp. 1132-1135) Respondent excepts to the ruling of the trial examiner in permitting the witness Ebbert

to testify over respondent's objection, concerning an alleged conversation with various persons in respondent's Massillon plant, including Ralph Ebberly, Paul Hoffman and Ralph J. Peppard.

149. (R. pp. 1135-1137) Respondent excepts to the ruling of the trial examiner in permitting the witness Ebbert to testify, over respondent's objection, concerning an alleged conversation with Ralph J. Peppard.

150. (R. p. 1138) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike the following answer given by the witness Ebbert: "Well, I didn't like the condition of the way they was pushing things around there."

151. (R. p. 1140) Respondent excepts to the ruling of the trial examiner in denying the motion of respondent to exclude all testimony of the Witness Ebbert concerning all conversations detailed by him and relating to his alleged difficulty with the men with whom he was working.

152. (R. p. 1143) Respondent excepts to the ruling of the trial examiner in permitting the witness Holderman to testify, over respondent's objection, concerning Employees' Representative Association.

153. (R. p. 1151) Respondent excepts to the ruling of the trial examiner in permitting the witness Holderman to testify concerning an alleged conversation with one Harold Detterline.

154. (R. pp. 1151-1152) Respondent excepts to the ruling of the trial examiner in permitting the witness Holderman to testify, over respondent's objection, concerning a conversation which the witness claimed to have had with one Harold Detterline, who was alleged to be telling what he, in turn, had been told by one John Stough.

155. (R. p. 1157) Respondent excepts to the ruling of the trial examiner in denying respondent's motion to strike all testimony of the witness Holderman.

156. (R. p. 1161) Respondent excepts to the ruling of the trial examiner in permitting the witness Allen to testify, over respondent's objection, concerning the so-called new Union, no mention of said new Union having been made in the complaint filed herein.

157. (R. p. 1165) Respondent excepts to the ruling of the trial examiner in permitting the witness Allen to testify concerning a meeting held in the office with one Don Lyman.

158. (R. p. 1170) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike all testimony of the witness Allen on the ground that it did not relate to any charge contained in the complaint and that the alleged conversations do not appear to have been with anybody authorized to speak on behalf of respondent.

159. (R. p. 1180) Respondent excepts to the ruling of the trial examiner permitting the witness Mouyios to testify, over respondent's objection, concerning an alleged conversation with one Happy North.

160. (R. pp. 1193-1194) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the conversation which the witness Mossop is alleged to have had with one Otto Hense.

161. (R. p. 1212) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike an answer of the witness Demos as to an indefinite conversation which he had with unknown employes concerning one Whitey Taylor.

162. (R. p. 1212) Respondent excepts to the ruling of

the trial examiner permitting the witness Demos to testify, over respondent's objection, as to a further alleged conversation with one Whitey Taylor.

163. (R. p. 1214) Respondent excepts to the ruling of the trial examiner permitting the witness Demos to relate, over respondent's objection, an alleged conversation with one George Pappas.

YOUNGSTOWN, OHIO HEARING BEFORE TRIAL EXAMINER

164. (R. p. 1242) Respondent excepts to the ruling of the trial examiner sustaining the objection of the Board to a question asked of the witness Gallagher by respondent, on cross examination, as to the number of C. I. O. organizers.

165. (R. pp. 1264-1265) Respondent excepts to the ruling of the trial examiner who, on his own motion, refused to permit respondent to ask the witness Fagan, on cross examination, whether the other men who were laid off at the same time he was, had applied for other jobs also.

166. (R. p. 1287) Respondent excepts to the ruling of the trial examiner sustaining an objection of the Board to a question asked of the witness White by respondent on cross examination as to the name of the company he worked for after leaving the employ of respondent.

167. (R. pp. 1294-1295) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to a question asked of the witness Walters upon direct examination respecting a conversation between the witness and one Manley, master mechanic.

168. (R. p. 1296) Respondent excepts to the ruling of the trial examiner in overruling respondent's motion to

strike the testimony of the witness Walters as to a certain meeting.

169. (R. pp. 1298-1299) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to the testimony of the witness Walters as to a conversation alleged to have taken place at a certain meeting (May, 1937).

170. (R. pp. 1301-1302) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 55, purporting to be two cards having to do with membership in the Independent Federation of Republic Employees.

171. (R. p. 1303) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to a question asked of the witness Walters, upon direct examination, as to a statement made by Mr. Manley that he would fire any one that talked Union around the job.

172. (R. p. 1305) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to an answer made by the witness Walters purporting to tell about a petition to the Mayor of Youngstown.

173. (R. p. 1306) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to a question and the answer thereto given by the witness Walters with respect to a speech made by a Mr. Jones.

174. (R. p. 1310) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to questions asked and testimony given by the witness Walters, upon direct examination, respecting a meeting held on May 19, 1937.

175. (R. p. 1326) Respondent excepts to the ruling of the trial examiner admitting into evidence Board's Ex-

hibit No. 60, purporting to be a copy of a case which the witness Goest received, the original of which was presented to the chairman and members of Joint Committee No. 2, having been filed March 20, 1936.

176. (R. p. 1327) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection and in permitting the witness Goest to testify as to the meaning of certain pencilled notations on the bottom of Board's Exhibit No. 60.

177. (R. pp. 1328-1329) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 61, which purports to consist of forms supplied by the company which Joint Committee No. 2 used in handling grievances.

178. (R. pp. 1331-1332) Respondent excepts to the ruling of the trial examiner in overruling respondent's objections to questions asked, testimony given and conversations related by the witness Goest, on direct examination, as to a certain complaint that he took up with the respondent respecting an increase in wages for bricklayers, in which he did not obtain the Ohio Works rate but only the Sheet and Tube rate.

179. (R. pp. 1334-1335-1335-A-1336) Respondent excepts to the ruling of the trial examiner in admitting, over respondent's objection, Board's Exhibits Nos. 62, 63 and 64, which purport to be minutes of the regular meeting of the General Body February 5, 1937; minutes of the special meeting of the General Body February 26, 1937, and minutes of the special meeting of the General Body, March 5, 1937, respectively; and respondent particularly objects to the pencilled notations being allowed to remain on the exhibits and the refusal of the trial examiner to cause the same to be erased.

180. (R. p. 1336) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 65, which purports to be the minutes of a special meeting of the General Body, March 15, 1937.

181. (R. pp. 1337-1338) Respondent excepts to the ruling of the trial examiner in overruling respondent's motion to strike, as hearsay, answers given by the witness Goest, on direct examination, to the effect that some of the boys told him that Mr. O'Hara was going through the mill getting votes and that he had been given permission by respondent to leave his job to solicit votes.

182. (R. p. 1339) Respondent excepts to the ruling of the trial examiner in refusing to strike answers of the witness Goest, given on direct examination, respecting a certain conversation which he is alleged to have had with Mr. O'Hara.

183. (R. p. 1342) Respondent excepts to the ruling of the trial examiner in overruling respondent's objection to a question calling for a conversation between the witness Goest and a fellow employe named Murphy.

184. (R. p. 1342) Respondent excepts to the ruling of the trial examiner in overruling the respondent's objection to a question asked of the witness Goest, on direct examination, as to why he thought it was not in the interest of the men in the mill for the said Goest to be removed from the committee and replaced by another man.

185. (R. p. 1344) Respondent excepts to the ruling of the trial examiner in admitting, over respondent's objection, Board's Exhibits Nos. 66, 67, 68 and 69, which purport to be copies of minutes of certain meetings.

186. (R. p. 1347) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike an answer of the witness Goest, given on direct examina-

tion, as to why a meeting was called, namely, to conform the Representative Plan to the Wagner Act.

187. (R. p. 1349) Respondent excepts to the ruling of the trial examiner in admitting Board's Exhibit No. 70, which purports to be a proposed revision of the Plan of Employee Representation worked on at a meeting in Cleveland, upon which were pencilled notations made by the witness Goest.

188. (R. pp. 1351-1352) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question calling for a conversation had at the above mentioned Cleveland meeting.

189. (R. p. 1357) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Goest, on direct examination, calling for a description of the so-called Mayor's petition.

190. (R. p. 1359) Respondent excepts to the ruling of the trial examiner overruling a motion to strike part of the testimony of the witness Goest, given on direct examination, in which he volunteered to state that he did not agree with certain matters in the Mayor's petition.

191. (R. pp. 1362-1363) Respondent excepts to the ruling of the trial examiner in admitting Board's Exhibits Nos. 71 and 72, which purport to be bulletins of respondent dated April, 1935, and April, 1936, respectively.

192. (R. pp. 1363-1364) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibits Nos. 73 and 74, which purport to be a program of the annual conference of the Representative Plan, Youngstown District, April 7, 1936, and an enumeration of the delegates that should attend the central council meeting.

193. (R. p. 1365) Respondent excepts to the ruling of

the trial examiner admitting Board's Exhibit No. 75, which purports to be a notice which the witness Goest received concerning the first annual conference of employee representatives.

194. (R. p. 1366) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Goest, on direct examination, respecting what was said at a meeting on March 19th.

195. (R. pp. 1367-1368-1369-1370) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked of the witness Goest, on direct examination, as to what was said and done at the meeting of May 19th with respect to the Independent Federation of Employees.

196. (R. p. 1371) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 76 which purports to be a copy of a pamphlet passed out at the meeting of May 19th.

197. (R. p. 1382) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked, on direct examination, of the witness Walters concerning statements made at the meeting of May 19th by an unidentified man.

198. (R. pp. 1385-1386-1387) Respondent excepts to the ruling of the trial examiner overruling respondent's objection and permitting the witness Walters, on direct examination, to repeat a speech he made at the meeting of May 19th.

199. (R. p. 1390) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 77, which purports to be a colored card similar to Board's Exhibit No. 5.

200. (R. p. 1392) Respondent excepts to the ruling of

the trial examiner overruling respondent's motion to strike all of the conversations and incidents related by the witness Walters on direct examination.

201. (R. pp. 1401-1402-1403) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to answers given by the witness Stephens in relating a speech alleged to have been made by John Graft.

202. (R. pp. 1405-1406) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to questions asked and answers given by the witness Stephens, on direct examination, respecting conversations he had with a fellow employe and Mr. John Graft.

203. (R. pp. 1409-1410) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked concerning certain conversations between the witness Stephens and Mr. Graft.

204. (R. p. 1410) Respondent excepts to the ruling of the trial examiner permitting the Board to ask the witness Stephens on direct examination, "What prompted you to come back on the 12th?"

205. (R. p. 1412) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a conversation alleged to have taken place between the witness Stephens and Mr. Graft.

206. (R. p. 1419) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a conversation alleged to have taken place between the witness Farner and Mr. Graft.

207. (R. p. 1421) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to question asked of the witness Farner as to the scope of Mr. Graft's authority.

208. (R. p. 1425) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Farner as to what happened at the meeting where Mr. Graft spoke.

209. (R. pp. 1431-1432) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked and an answer given by the witness Farner as to a conversation had between him and the employment agency of the Youngstown Sheet and Tube Company.

210. (R. p. 1444) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Elder, on direct examination, as to how he was summoned to a meeting, who spoke and what was said.

211. (R. p. 1464) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike a certain conversation related by the witness Simcox that he had with three policemen.

212. (R. pp. 1481-1482-1483) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a conversation related by the witness Opalcih which was had between him and one Kology who was not a foreman but just an employe.

213. (R. p. 1491) Respondent excepts to the ruling of the trial examiner in sustaining an objection of the Board to a question asked by respondent of the witness Opalcih, on cross examination, as to whether or not he worked for his family until the C. I. O. came to Youngstown.

214. (R. pp. 1503-1504) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked by the Board of the witness Krill, on direct examination, with reference to certain conversations

had between him and one Emil Valley.

215. (R. p. 1510) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike an answer of the witness Krill concerning rehiring of employes.

216. (R. pp. 1519-1520) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to question witnesses concerning employment, since their alleged discharge by the respondent, of those persons named in the complaint.

217. (R. pp. 1540-1541) Respondent excepts to the action, conduct and statements made by the trial examiner directed to counsel for respondent in connection with the cross examination of the witness Haren, and particularly excepts thereto on the ground that the conduct, action and statements made by the trial examiner with respect to the Board's witnesses, compared with the same towards witnesses for respondent, disclosed his bias and prejudice against the respondent.

218. (R. pp. 1546-1547) Respondent excepts to the action, conduct and statements of the trial examiner, who, on his own motion, prevented respondent from asking the witness Haren, on cross examination, whether he talked to counsel for the Board at 302 Terminal Building, Youngstown, and in sustaining the objection of the Board to such question.

219. (R. pp. 1568-1569) Respondent excepts to the ruling of the trial examiner in sustaining the Board's objection to questions asked of the witness Rigby, on cross examination, as to when he signed with the C. I. O., and particularly, the respondent excepts to the statements made by the trial examiner to counsel for respondent.

220. (R. pp. 1585-A-B-C-D, 1586) Respondent excepts

to the ruling of the trial examiner striking respondent's statement that the witness Chismus had been indicted; excepts to the action of the trial examiner excluding respondent's remarks from the record; excepts to the action of the trial examiner denying any argument upon the question; excepts to the action of the trial examiner excluding the exception from the official record; excepts to the ruling of the trial examiner sustaining Board's objection to the question as to whether the witness Chismus was involved in a riot at Youngstown.

221. (R. p. 1616) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike part of an answer of the witness DeLong that "* * * every man that was a C. I. O. man wasn't working."

222. (R. p. 1624) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness DeLong on direct examination as to a conversation with an employe of the Y. M. C. A.

223. (R. p. 1677) Respondent excepts to the ruling of the trial examiner overruling respondent's objection and permitting the witness Jones to explain his apprentice contract (Board's Exhibit 78).

224. (R. p. 1678) Respondent excepts to the ruling of the trial examiner permitting the introduction in evidence of Board's Exhibit No. 78, Apprentice Contract of George E. Jones.

225. (R. p. 1688) Respondent excepts to the ruling of the trial examiner sustaining Board's objection to a question asked of the witness Jones by respondent as to whether he knew or was interested in the number of respondent's employes who returned to work.

226. (R. pp. 1692-1693) Respondent excepts to the ruling of the trial examiner overruling respondent's objection

to a question asked of the witness Cain, on direct examination, as to a statement made by a Mr. Baldwin concerning the company union.

227. (R. pp. 1695-1696) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibits Nos. 79, 80 and 81, being papers in connection with the Employees Independent Association at Warren, Ohio.

228. (R. p. 1708) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question concerning a conversation between the witness Riffle and one Mike.

229. (R. pp. 1713-1714) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked of the witness Riffle, on direct examination, as to whether any new man had been hired in his department while he was not working, when the witness did not show any actual knowledge of the facts.

230. (R. pp. 1725-1726) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked on direct examination of the witness Lewis as to whether he was going to sign a card of the Employees Independent Association and as to who asked him to sign, without showing that the said person was connected in any way with respondent.

231. (R. p. 1728) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to questions asked of the witness Lewis, on direct examination, concerning a conversation he had with one Shorty Dishon.

232. (R. pp. 1745-1746) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to questions asked of the witness Green on direct examination as to what the men in the plant felt was the policy of

the company about joining an outside union.

233. (R. p. 1758) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Green on direct examination concerning a conversation with one Mr. Page, his foreman.

234. (R. p. 1761) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked on direct examination of the witness Green respecting conversations he had with an employes' representative of the company.

235. (R. p. 1777) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike the testimony and the answer given by the witness Hite with reference to a conversation he had with a fellow employe, a locomotive engineer.

236. (R. p. 1801) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike the conversations between the witness Hite and other persons named in the record.

237. (R. pp. 1807-1808-1810) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked on direct examination of the witness Garnett respecting applications of the Employees Independent Association and a conversation had with a Mr. Taylor.

238. (R. p. 1822) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question concerning exhibits of the Employees Independent Association.

239. (R. p. 1823) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question concerning a conversation between Mr. Miller, a foreman, and the witness Carter.

240. (R. pp. 1824-1825-1826) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked of the witness Carter concerning the Employees Independent Association and a conversation with Mr. Miller.

241. (R. pp. 1834-1835) Respondent excepts to the ruling of the trial examiner sustaining Board's objection to a question asked on cross examination of the witness Carter as to whether he was present at a railroad crossing at a time that a blockade was placed there; and, further, excepts to that part of the trial examiner's instruction to respondent to refrain from asking questions about the Baltimore & Ohio Railroad.

242. (R. p. 1850) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a conversation alleged to have taken place between the witness Webb and Mr. Mulligan, an employes' representative.

243. (R. p. 1856) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 85, which purports to be a copy of the minutes of the regular meeting of Standing Committee No. 2, September 10, 1935.

244. (R. pp. 1857-1858) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 86, which purports to be a form for a complaint or grievance.

245. (R. p. 1861) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked on direct examination of the witness Webb as to an unusual occurrence at the time the vote was taken in Joint Committee No. 2 in 1934.

246. (R. pp. 1864-1865) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 87, which purports to be a form theretofore used by an

employes' representative in connection with time spent on work for the representative plan.

247. (R. p. 1868) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked on direct examination of the witness Webb as to why he did not run for reelection under the representative plan.

248. (R. pp. 1869-1871) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to questions asked on direct examination of the witness Webb as to conversations between him and one Mulligan.

249. (R. pp. 1873-1876-1877) Respondent excepts to the rulings of the trial examiner overruling respondent's objections to questions asked on direct examination of the witness Webb as to conversations between him and one McKenney.

250. (R. pp. 1879-1880) Respondent excepts to the ruling of the trial examiner sustaining Board's objection to a question asked of the witness Webb, on cross examination, as to when he decided in his own mind to join the C. I. O.

251. (R. pp. 1882-1883-1884) Respondent excepts to the ruling of the trial examiner sustaining Board's objection to a question asked of the witness Webb, on cross examination, as to his knowledge of a railroad track being dynamited and cars of coal dumped by the strikers, and further excepts to the ruling of the trial examiner sustaining the objection to that line of questioning.

252. (R. pp. 1893-A, 1894) Respondent excepts to the conduct and action of the trial examiner in striking respondent's remarks, in volunteering to instruct respondent, and in interfering with the cross examination of the witness Webb before any objection was made by the Board.

253. (R. pp. 1908-1909) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Parkovich on direct examination as to a conversation between him and Mr. Michels.

254. (R. pp. 1917-1918) Respondent excepts to the conduct of the trial examiner in interrupting respondent's cross examination and in giving the uncalled for admonition not to take advantage of the witness.

CLEVELAND, OHIO, HEARING BEFORE TRIAL EXAMINER

255. (R. p. 1928) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the following portion of the testimony of the witness Balint: "I told Favorito at the time that we walked towards the plant that something—something must be up."

256. (R. p. 1929) Respondent excepts to the ruling of the trial examiner permitting the witness Balint to testify on direct examination as to what his companion Favorito was thinking.

257. (R. p. 1930) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike all the testimony of the witness Balint relating to an alleged occurrence at the gate of the Truscon plant of respondent.

258. (R. p. 1932) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike a further portion of the testimony of the witness Balint relating to what he and his companion decided.

259. (R. p. 1935) Respondent excepts to the ruling of the trial examiner denying respondent the right to inter-

rogate the witness Balint on cross examination as to his activities following his discharge from respondent's plant in September, 1935.

260. (R. p. 1935) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to further cross examine the witness Balint as to his activities subsequent to his discharge from respondent's plant.

261. (R. p. 1952) Respondent excepts to the ruling of the trial examiner permitting the witness Vincent Favorito to testify concerning an incident that occurred in the vicinity of the Globe Theater near 55th Street and Woodland Avenue, Cleveland, Ohio.

262. (R. p. 1954) Respondent excepts to the ruling of the trial examiner in permitting the witness Vincent Favorito to testify as to an occurrence in the vicinity of Woodland Avenue, Cleveland, Ohio, and in permitting said witness, in connection with his testimony, to state his conclusion as to why certain people did not appear at a meeting.

263. (R. pp. 1954-1955) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Vincent Favorito relating to an occurrence in the vicinity of 55th Street and Woodland Avenue, Cleveland, Ohio.

264. (R. p. 1962) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to interrogate the witness Vincent Favorito as to what, if anything, he had to do with preparing the evidence at the hearing before the Board.

265. (R. pp. 1971-1972) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Benny Favorito relating to an alleged conversation between a Captain Jones and his men at the gates of respondent's Cleveland plant.

266. (R. p. 1982) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify concerning an alleged conversation with one Grulick.

267. (R. p. 1983) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify, over respondent's objection, concerning an alleged conversation with one Dunch.

268. (R. p. 1983) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike an alleged conversation between the witness and one Dunch.

269. (R. p. 1983) Respondent excepts to the ruling of the trial examiner in permitting the witness Castman, over respondent's objection, to testify further as to a conversation with one Dunch.

270. (R. p. 1984) Respondent excepts to the ruling of the trial examiner in permitting the witness Castman to testify, over respondent's objection, to an alleged conversation with an unidentified member of respondent's police force.

271. (R. p. 1985) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Castman involving an alleged conversation with an unidentified member of respondent's police force.

272. (R. p. 1985) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify concerning an alleged conversation with one Sergeant Brown.

273. (R. pp. 1986-1987) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify concerning an alleged conversation with Captain Jones of respondent's police force.

274. (R. p. 1990) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Castman concerning an alleged conversation with one Captain Jones.

275. (R. p. 1992) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify concerning an alleged conversation with respondent's policeman.

276. (R. p. 1993) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to testify concerning an alleged conversation with one of respondent's policemen on or about April 19, 1937.

277. (R. p. 1994) Respondent excepts to the ruling of the trial examiner permitting the witness Castman to detail an alleged conversation with one Jense.

278. (R. pp. 2030-2031) Respondent excepts to the ruling of the trial examiner permitting the witness Cikah to testify concerning the alleged watching of a beer parlor operated by the witness's wife and by respondent's police.

279. (R. pp. 2032-2033) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Cikah concerning a conversation with various people, including the witness's neighbors.

280. (R. p. 2033) Respondent excepts to the ruling of the trial examiner permitting the witness Cikah to testify concerning an alleged conversation with neighbors living across the street from him.

281. (R. p. 2034) Respondent excepts to the ruling of the trial examiner permitting the witness Cikah to testify concerning an alleged conversation with neighbors living across the street from him.

282. (R. pp. 2051-2052) Respondent excepts to the ruling of the trial examiner permitting the witness Popik to testify, over respondent's objection, concerning an alleged conversation with an unidentified person whose name is given as Andy.

283. (R. p. 2057) Respondent excepts to the ruling of the trial examiner permitting the witness Popik to testify, over respondent's objection, concerning an alleged conversation with one Mr. Cooper.

284. (R. p. 2059) Respondent excepts to the ruling of the trial examiner permitting the witness Popik to testify, over respondent's objection, to an alleged conversation with a person identified only by the name of Charlie.

285. (R. p. 2070) Respondent excepts to the ruling of the trial examiner permitting the witness Neuman, over respondent's objection, to testify concerning an alleged conversation with one Jake Simons.

286. (R. pp. 2075-2076) Respondent excepts to the manner and form of the statements of the trial examiner in interfering with respondent's cross examination, without any objection to the method of cross examination having been interposed by Board's counsel.

287. (R. p. 2085) Respondent excepts to the ruling of the trial examiner permitting the witness Sikorski to testify, over respondent's objection, concerning an alleged conversation with the employment manager and general manager at respondent's Monroe, Michigan, plant.

288. (R. p. 2136) Respondent excepts to the ruling of the trial examiner permitting the witness Korecky to testify, on direct examination, to a request he made while he served as a representative under the Employees' Representative Plan.

289. (Blank).

290. (R. p. 2161) Respondent excepts to the ruling of the trial examiner sustaining Board's objection and denying respondent the right to continue the cross examination of the witness Korecky as to the source from which he learned that a strike was to be called before he returned to work.

291. (R. p. 2168) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify, on direct examination, concerning a conversation which he had with two employes of the Otis Steel Company on July 24, 1936.

292. (R. p. 2172) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to relate a conversation between him and a fellow employe, Sam Naletrich.

293. (R. pp. 2172-2173) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike the testimony of the witness Troyanovich purporting to relate a conversation he had with a fellow employe, Sam Naletrich.

294. (R. p. 2180) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify concerning and to relate an alleged conversation between him and a Mr. Balint, an organizer for the Steel Workers' Organizing Committee, who had formerly been an employe of respondent.

295. (R. p. 2181) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike the testimony of the witness Troyanovich concerning matters told him by one Alex Balint and which were the subject of a conversation between the said Balint and one Lohman.

296. (R. p. 2182) Respondent excepts to the ruling

of the trial examiner permitting the witness Troyanovich to testify that one Balint told him that Bozo Damisch had a signed confession from the said Lohman.

297. (R. p. 2182) Respondent excepts to the ruling of the trial examiner refusing to strike an answer of the witness Troyanovich, in which he stated that the said Damisch had a signed confession from Lohman admitting that the said Lohman had accepted money from respondent to sell the men out.

298. (R. p. 2183) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify, on direct examination, to a conversation between him and the said Damisch, sub-regional or regional director for C. I. O.

299. (R. p. 2184) Respondent excepts to the ruling of the trial examiner in refusing to strike an answer of the witness Troyanovich to the effect that there was a lack of interest in the Union because the men were terrorized by respondent's agents.

300. (R. p. 2188) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify to an alleged conversation between him and a fellow employe, Tony Matchurik.

301. (R. p. 2188) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify, on direct examination, to what Tony Matchurik told him as to statements made by Mr. Wakefield.

302. (R. p. 2189) Respondent excepts to the ruling of the trial examiner in refusing to strike an answer of the witness Troyanovich, on direct examination, in which he relates a conversation between the said Matchurik and Mr. Wakefield, the substance of which conversation was related to the witness by the said Matchurik.

303. (R. p. 2191) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify, on direct examination, concerning a conversation between him and a fellow employe, Matchurik.

304. (R. p. 2192) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich on two occasions to testify, on direct examination, as to what he said Matchurik told him that Charlie Barrie said.

305. (R. p. 2195) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 88, which purports to be a copy of minutes of a meeting of the General Body on September 8, 1936, handed to the witness Troyanovich by Mr. John Exall.

306. (R. p. 2196) Respondent excepts to the ruling of the trial examiner permitting the witness Troyanovich to testify, on direct examination, as to what Mr. Exall told him that Mr. Carpenter said.

307. (R. p. 2197) Respondent excepts to the ruling of the trial examiner in refusing to strike the answer of the witness Troyanovich, on direct examination, in which he relates what Mr. Exall told him that Mr. Carpenter said.

308. (R. p. 2200) Respondent excepts to the ruling of the trial examiner in refusing on two occasions to permit respondent to inquire of the witness Troyanovich, on cross examination, as to whether or not he had talked Communism with the men in respondent's plant during working hours.

309. (R. pp. 2200-2201) Respondent excepts to the ruling of the trial examiner in sustaining Board's objection to a question of the respondent directed to the witness Troyanovich, on cross examination, as to whether he was a Communist.

310. (R. p. 2217) Respondent excepts to the ruling

of the trial examiner permitting the witness Petak to testify, over respondent's objection, concerning the details of an alleged conversation with one Sam Naletrich.

311. (R. p. 2221) Respondent excepts to the ruling of the trial examiner permitting the witness Petak to testify, over respondent's objection, concerning the details of an alleged conversation between him and an insurance nurse.

312. (R. p. 2237) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, as to how he ascertained that a Mr. Peters in respondent's plant told men not to vote for him as an employees' representative.

313. (R. p. 2237) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, to what other unidentified persons told him as to their alleged conversation with a Mr. Peters concerning the witness as a candidate for representative.

314. (R. p. 2239) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 89, purporting to be a notice naming employes eligible to vote and eligible to be elected as representatives, Electrical Division, Corrigan McKinney Plant.

315. (R. p. 2249) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, as to whether he had ever taken up any grievances for the men in his department.

316. (R. p. 2250) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, concerning transactions which he claims to have had as a representative on behalf

of scarfers for whose department the witness was an employees' representative.

317. (R. p. 2260) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibits Nos. 93, 94 and 95, purporting to be copies of minutes of various meetings held by employees' representatives.

318. (R. p. 2261) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify concerning an alleged conversation with one Troyanovich, whom he represented.

319. (R. p. 2264) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, to an alleged conversation between a committee representative and one Charlie Barrie.

320. (R. p. 2269) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 96, purporting to be a letter to members of the Health and Sanitation Committee, dated September 10, 1936.

321. (R. p. 2279) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, as to whether Manuel Garcia was discharged by respondent the day following a meeting described by the witness.

322. (R. p. 2279) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, to a conversation with Manuel Garcia concerning the latter's term of employment with respondent.

323. (R. p. 2287) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to tes-

tify, over respondent's objection, concerning an alleged conversation with Balint.

324. (R. p. 2292) Respondent excepts to the ruling of the trial examiner permitting the witness Exall to testify, over respondent's objection, concerning his conclusion as to what was included in the minutes of the meeting of the representatives in respondent's plant.

325. (R. p. 2318) Respondent excepts to the ruling of the trial examiner in interfering with the cross examination of the witness Exall without any objection from the Board, and in refusing to permit respondent to interrogate the witness Exall, upon cross examination, concerning the facts in connection with a specific act of violence committed by the witness in striking one of respondent's employes during the strike.

326. (R. pp. 2327-2328) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 101, consisting of certain check stubs without evidence of dates.

327. (R. pp. 2330-2331) Respondent excepts to the ruling of the trial examiner permitting the witness Sabol to testify, over respondent's objection, concerning the Employees' Representative Association in respondent's Cleveland plant (Corrigan, McKinney).

328. (R. p. 2331) Respondent excepts to the ruling of the trial examiner permitting the witness Sabol to testify as to what first definite action, to his knowledge, was taken in connection with the Employees' Representative Plan.

329. (R. p. 2333) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 102, purporting to be a membership card of the Employees' Representative Association, Corrigan, McKinney Plant.

330. (R. p. 2337) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike all of the testimony of the witness Sabol relating to the Employees' Representative Plan in respondent's Cleveland (Corrigan, McKinney) plant.

331. (R. p. 2354) Respondent excepts to the ruling of the trial examiner permitting the witness Rodway to testify, over respondent's objection, about an alleged conversation between a Mr. MacMeans and the witness's wife when the witness was not present.

332. (R. p. 2355) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike the testimony of the witness Rodway concerning a conversation between the witness's wife and one MacMeans in the absence of the witness.

333. (R. p. 2360) Respondent excepts to the ruling of the trial examiner permitting the witness Quinn to testify, over respondent's objection, concerning conversations between the witness and a Mr. Sisk, an employes' representative at the respondent's Corrigan, McKinney plant.

334. (R. p. 2361) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike a conversation between the witness and a Mr. Sisk, an employes' representative.

335. (R. p. 2363) Respondent excepts to the ruling of the trial examiner permitting the witness Quinn to testify, over respondent's objection concerning an alleged conversation between the witness and a Mr. Satter.

336. (R. p. 2369) Respondent excepts to the ruling of the trial examiner permitting the witness Quinn to testify, over respondent's objection, to an alleged conversation between the witness and Jack Newhouse.

337. (R. p. 2369) Respondent excepts to the ruling

of the trial examiner denying respondent's motion to strike all of the testimony of the witness Quinn concerning an alleged conversation with Jack Newhouse.

338. (R. p. 2379) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify, over respondent's objection, concerning an alleged conversation with a Mr. Lauton, night foreman.

339. (R. p. 2380) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify, over respondent's objection, concerning an alleged conversation with a Mr. Eckert.

340. (R. pp. 2382-2383) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify concerning the Employees' Representative Plan in respondent's Cleveland (Corrigan, McKinney) plant.

341. (R. p. 2383) Respondent excepts to the ruling of the trial examiner admitting Board's Exhibit No. 105, purporting to be an application card for membership in the Employees' Representative Association.

342. (R. p. 2384) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike that portion of the testimony of the witness MacMeans to the effect that he figured that he had to be careful about what he did or said.

343. (R. p. 2386) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify to an alleged conversation with a Mr. Bankey, first assistant roller.

344. (R. p. 2387) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify concerning the details of a conversation between the witness's wife and a Mr. Kavanaugh.

345. (R. p. 2391) Respondent excepts to the ruling of the trial examiner permitting the witness MacMeans to testify, over respondent's objection, concerning the details of an alleged statement of a Mr. Eckert about a man by the name of Lohman.

346. (R. p. 2392) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike all of the testimony of the witness MacMeans concerning his conversations with Eckert, with Kavanaugh, and with Lauton.

347. (R. pp. 2396-2397) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 106, purporting to be a certified statement filed with the Securities Exchange Commission by respondent.

348. (R. p. 2397) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibits Nos. 107, 108 and 109, purporting to be copies of reports of respondent to Securities Exchange Commission.

349. (R. p. 2398) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike Board's Exhibits Nos. 106, 107, 108 and 109, purporting to be copies of reports of respondent to Securities Exchange Commission.

350. (R. p. 2399) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 110, purporting to be a report in re respondent by Standard Statistics Company.

351. (R. p. 2399) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike Board's Exhibit No. 110, purporting to be a copy of a report by Standard Statistics Company, Inc., published June 7, 1937.

352. (R. p. 2400) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 111, purporting to be a copy of a report by Standard Statistics Company, Inc.

353. (R. p. 2400) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike Board's said Exhibit No. 111.

354. (R. p. 2401) Respondent excepts to the ruling of the trial examiner admitting, over respondent's objection, Board's Exhibit No. 112, purporting to be a booklet of some hearing before the National Labor Relations Board bearing upon the status of the National Labor Relations Act and the reasonableness of the regulations embodied therein.

355. (R. p. 2402) Respondent excepts to the ruling of the trial examiner denying respondent's motion to strike Board's said Exhibit No. 112.

356. (R. pp. 2403-2404-2405) Respondent excepts to the ruling of the trial examiner granting Board's motion, over respondent's objection, to amend the complaint by striking therefrom certain names set forth on pages 2403 and 2404 of the record.

357. (R. p. 2405) Respondent excepts to the ruling of the trial examiner denying respondent's motion to dismiss the complaint as to the persons named on pages 2403 and 2404 and included in the motion of the Board to amend the complaint by striking the names of said persons therefrom.

RESPONDENT'S EVIDENCE AT CANTON HEARING BEFORE TRIAL EXAMINER.

358. (R. p. 2409) Respondent excepts to the ruling of the trial examiner denying respondent's motion to dis-

miss the complaint, said motion being set forth on pages 2408-a, 2408-b and 2408-c of the record.

359. (R. p. 2488) Respondent excepts to the ruling of the trial examiner refusing to permit respondent's counsel to interrogate the witness Case, upon direct examination, as to why he took an interest in the matters which he had described in his testimony.

360. (R. pp. 2488-2489) Respondent excepts to the ruling of the trial examiner in respect to the offer to prove made by respondent, and the observation by the trial examiner that an offer to prove does not mean anything.

361. (R. p. 2492) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Case as to whether he had ever noticed mill policemen at the gates of respondent's plant.

362. (R. p. 2493) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Case, upon cross examination, as to whether he noticed mill policemen at any time at the entrance gates of respondent's plant.

363. (R. p. 2543) Respondent excepts to the ruling of the trial examiner sustaining Board's motion to strike a portion of the answer of the witness Hess, to the effect that he had heard rumors of force and wanted to see for himself.

364. (R. p. 2552) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Hess as to whether he made any investigation as to the men who were arrested in Massillon on July 11, 1937.

365. (R. p. 2626) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike

the following answer of the witness Schmid: "Because of opposition on the part of strikers."

366. (R. pp. 2629-2630) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Schmid as to what he did all day.

367. (R. pp. 2630-2634) Respondent excepts to the ruling of the trial examiner permitting the Board to interrogate the witness Schmid, over respondent's objection, concerning various business activities of the respondent.

368. (R. p. 2634) Respondent excepts to the ruling of the trial examiner overruling respondent's motion to strike all of the testimony of the witness Schmid elicited upon cross examination up to page 2634.

369. (R. pp. 2659-2660) Respondent excepts to the ruling of the trial examiner sustaining Board's motion to strike the following answer of the witness Cravens: "He yelled out 'go back into your hole, you dirty rats.' Well, we didn't see any use starting running back into the building."

370. (R. p. 2769) Respondent excepts to the ruling of the trial examiner permitting the Board to interrogate the witness Larker, upon cross examination, as to whether, like all of the girls in the payroll division, he was not afraid of the clubs in the hands of the pickets.

371. (R. p. 2776) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Larker as to whether he saw other employes sign a back-to-work petition in the Canton plant.

372. (R. pp. 2784-2785) Respondent excepts to the ruling of the trial examiner permitting the Board, over re-

spondent's objection, to interrogate the witness Vojnovich as to who called the four men, who worked along with him, back to work.

373. (R. p. 2796) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to interrogate the witness Robert Adams, upon direct examination, as follows: "And did you hear any commotion down—any shooting or any noise—down below you that night?"

374. (R. p. 2797) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Adams that he saw persons piling up stones.

375. (R. p. 2853) Respondent excepts to the ruling of the trial examiner permitting the Board to interrogate the witness Arnold as to where he signed the back-to-work petition.

376. (R. pp. 2858-2859) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Spicer.

377. (R. pp. 2878-2881) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to interrogate the witness Wood, upon direct examination, concerning what he observed on the night of the Massillon, riot, the substance of the testimony of this witness being set forth in respondent's offer to prove.

378. (R. p. 2904) Respondent excepts to the ruling of the trial examiner in refusing to permit respondent to ask the witness Laber, upon direct examination, the following question: "By way of refreshing your recollection, did you see any bricks thrown or anything thrown that night?"

379. (R. pp. 2904-A-2904-B) Respondent excepts to the attitude of the trial examiner, as displayed by his rulings

and observations concerning pertinent rules of law, wherein he stated: "Listen, we are not following the law of Ohio," and later, after being advised as to the rules existing in the Ohio Federal courts, stated: "It is immaterial to me what the rules of law are or anything else. The specific law in these particular hearings is the law that governs these hearings."

380. (R. pp. 2907-2908) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike all of the testimony of the witness Laber.

381. (R. p. 3199) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Fellabom, upon cross examination, as to what men were doing around the C. I. O. headquarters at Massillon on the night of the riot, as follows: "Very restless."

382. (R. pp. 3209-3210) Respondent excepts to the ruling of the trial examiner denying respondent's objection to interruptions by the Board of the witness Fellabom before he had completed his answer.

383. (R. pp. 3223-3224) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Johnson as to the throwing of a gas bomb on the night of July 11, 1937.

384. (R. pp. 3246-3247) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the following portion of the answer of the witness Moorhead: "It was too hot in there for me so I milled around myself."

385. (R. p. 3248) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Moorhead, as follows: "Just milling—just standing around, talking. You never saw

those people there at that corner before."

386. (R. pp. 3253-3257) Respondent excepts to the ruling of the trial examiner permitting the Board to interrogate the witness Moorhead upon cross examination, over respondent's objection, as to what materials were shipped from the department of respondent in which the witness worked, the amount of products shipped, the destination of the shipments, and the manner of making them.

387. (R. p. 3257) Respondent excepts to the ruling of the trial examiner permitting the Board to interrogate the witness Moorhead upon cross examination, over respondent's objection, as to how many men he fired.

388. (R. p. 3258) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Moorhead, upon cross examination, as to whether foremen have the right to fire men.

389. (R. p. 3261) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the following part of the answer of the witness Moorhead: "until the time the pickets came out there and prevented him from going to work May 25th."

390. (R. p. 3262) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Moorhead, upon cross examination, concerning a conversation with one Reed Moorhead.

391. (R. pp. 3263-3264) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Moorhead as to whether his son was paid for the time he spent on the police force.

392. (R. pp. 3297-3298) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Denzer, upon cross examination, as to the period of time that he worked in respondent's Massillon plant after the strike started, and the conditions under which he worked there during that period.

393. (R. p. 3299) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Denzer, upon cross examination, as to whether any policemen objected to his going over the viaduct.

394. (R. p. 3317) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Norris as to whether he ever hired or fired any men.

395. (R. p. 3319) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to ask the witness Norris the following question: "Did he tell you who told him to come to tell you about it?"

396. (R. p. 3320) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to ask the witness Norris the following question, upon cross examination: "Did any of the foremen tell you to go there to the Chamber of Commerce room?"

397. (R. pp. 3331-3332) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike all of the testimony of the witness Hartley.

398. (R. p. 3343) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Ertle, upon cross ex-

amination, as to whether any one suggested that he go back to work.

399. (R. p. 3360) Respondent excepts to the ruling of the trial examiner permitting the Board to question the witness Mullett, over respondent's objection, as to whether any one suggested that he go back to work.

400. (R. pp. 3370-3371) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to question the witness Coleman as to where he signed the back-to-work petition in Massillon, and under what circumstances.

401. (R. p. 3392) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness James Kenneth Adams, upon cross examination, as to whether he had not heard some other witness who preceded him on the stand testify that he could not identify anyone who was picking up stones when he looked out of the window.

402. (R. p. 3430) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness France relating to a boy having been injured after having been struck by a stone thrown by a picket the night preceding a conference which the witness had at strike headquarters with the C. I. O.

403. (R. p. 3442) Respondent excepts to the ruling of the trial examiner in failing to admit Respondent's Exhibit No. 8, purporting to be a photograph of clubs taken from pickets.

(This is a conditional exception, to be disregarded if trial examiner admits the exhibit. The matter was held under advisement when this statement of exceptions was prepared.)

404. (R. p. 3448) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness France concerning the criminal charges filed and pending against one John Rossi.

405. (R. p. 3456) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness France in respect to Ivan Bartolic.

406. (R. p. 3469) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Pauli, upon cross examination, as to who suggested he ought to return to work after the strike.

407. (R. pp. 3490-3491) Respondent excepts to the action of the trial examiner in dealing with the testimony of the witness Pauli, and to the refusal of the trial examiner to permit the witness to explain a statement made upon direct examination, as requested by respondent.

408. (R. p. 3505) Respondent excepts to the ruling of the trial examiner in refusing to admit Respondent's Exhibit No. 9, which was a bullet.

409. (R. p. 3508) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike all of the testimony of the witness Ralph Scott pertaining to a bullet which the witness testified was fired into respondent's plant during the strike.

410. (R. p. 3508) Respondent excepts to the ruling of the trial examiner in refusing to admit Respondent's Exhibit No. 9, which was re-offered at this point.

411. (R. pp. 3509-3510) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Ralph

Scott concerning the signing of back-to-work petitions.

412. (R. p. 3536) Respondent excepts to the ruling of the trial examiner permitting the Board to cross examine the witness Watkins, over respondent's objection, as to whether a prior answer given by the witness was correct.

413. (R. p. 3550) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Lustig, upon direct examination, that he had observed shots being fired from the C. I. O.

414. (R. pp. 3552-3553) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Lustig as to why he left a window where he was watching some shooting in Massillon on or about July 11th.

415. (R. p. 3609) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Spees, upon cross examination, as to how many hours a day he was paid for while he was in the mill several days immediately after the strike was called.

416. (R. p. 3616) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Spees in respect to the throwing of stones on the night of the Massillon riot.

417. (R. p. 3621) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Wertz, upon direct examination, that a switching locomotive which was run into the Massillon plant during the strike was stoned.

418. (R. p. 3624) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness MacKenzie, upon direct ex-

amination, concerning the details of the stoning of a switching locomotive which was operated by the witness as engineer into respondent's plant during the strike.

419. (R. pp. 3630-3631) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Diamond, upon cross examination, as to how he came to return to work in respondent's Massillon plant on July 8th.

420. (R. p. 3647) Respondent excepts to the ruling of the trial examiner striking the following portion of the answer of the witness Betz upon direct examination: "Well, he is a—he must be a member. He was down there and had a badge on himself and seemed to have a lot to say."

421. (R. p. 3665) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Betz as to where and on what date he signed a back-to-work petition in Canton.

422. (R. p. 3693) Respondent excepts to the ruling of the trial examiner striking the following part of the answer of the witness Stewart: "did not permit us to have an election."

423. (R. p. 3703) Respondent excepts to the ruling of the trial examiner striking from the testimony of the witness Stewart, the word "election."

424. (R. p. 3705) Respondent excepts to the ruling of the trial examiner striking from the testimony of the witness Stewart, the word "election."

425. (R. p. 3719) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Stewart, upon re-direct examination, as follows: "He realized there would be violence, men would get hurt."

426. (R. p. 3735) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Stokoe concerning his treatment at C. I. O. headquarters in Bandi's Hall, and his experiences on Martindale Road, at which time the witness testified he was kidnapped by C. I. O. strikers.

427. (R. p. 3768) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Stokoe, upon direct examination, as to his reason for carrying a gun.

428. (R. pp. 3804-3805) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the testimony of the witness Snyder relating to the Martindale Road incident.

429. (R. pp. 3866-3869) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Kristoff, given on direct examination on behalf of respondent.

430. (R. pp. 3871-3872) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Knotts, upon direct examination, wherein he related an incident involving the firing of some shots by pickets surrounding respondent's Canton plant during the strike.

431. (R. p. 3872) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Knotts, upon direct examination, to the effect that he tripped over a cable stretched around a fire plug.

432. (R. p. 3873) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Knotts, upon direct examination, that a police cruiser came along and frightened certain men away.

433. (R. p. 3876) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike

all of the testimony of the witness Knotts upon direct and cross examination, such motion having been made by the Board after cross examination of the witness.

434. (R. pp. 3925-3926) Respondent excepts to the ruling of the trial examiner in sustaining the Board's motion to strike the testimony of the witness Linckenhely upon direct examination, that no officer, or agent, or person in a supervisory capacity dominated or interfered with the employee representation plan in respondent's Massillon plant.

435. (R. p. 3993) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibit No. 15, being the original back-to-work petitions signed by respondent's employees in Massillon.

436. (R. p. 4020) Respondent excepts to the ruling of the trial examiner striking the following portion of the testimony of the witness Hershberger, upon direct examination: "By telephone up until the time that the wires were cut, and then by letter."

437. (R. p. 4023) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Hershberger, upon cross examination, as to how many hours he worked during the time that he stayed at the respondent's plant between May 25th and June 24th, 1937.

438. (R. p. 4039-A) Respondent excepts to the action of the trial examiner in denying respondent the right to make an offer to prove that respondent's witness Hostetler recalled an attempted election at the City Hall, Canton.

439. (R. pp. 4041-4041-A) Respondent excepts to the action of the trial examiner reminding respondent's witness Hostetler that he was under oath and that he did not care about the witness's theories, and to the language used by the trial examiner in addressing the witness.

440. (R. p. 4046) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibit No. 16, being a copy of a letter and attached ballot prepared by the Canton Chamber of Commerce and forwarded to respondent's employees during the strike.

(The Board, at p. 3 of the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, held that this exhibit would be admitted.)

441. (R. p. 4051) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibit No. 17, being the original report made by the judges to the Canton Chamber of Commerce of the results of the vote taken during the strike at respondent's plant at Canton to determine which of respondent's employees wished to continue on strike and which wished to return to work.

(The Board, at p. 3 of the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, held that this exhibit would be admitted.)

442. (R. p. 4051) Respondent excepts to the action of the trial examiner sustaining Board's motion to strike all of the testimony of the witness Hostetler appearing up to page 4051 of the record.

443. (R. p. 4079) Respondent excepts to the attitude of the trial examiner and the directions which he gave to the witness Hostetler in insisting that the witness answer a question "yes" or "no."

444. (R. p. 4088) Respondent excepts to the action of the trial examiner striking the following portion of the testimony of the witness Hostetler, upon cross examination: "To be perfectly unbiased in every way."

445. (R. p. 4088) Respondent excepts to the action of the trial examiner in lecturing the witness Hostetler and in insisting that the witness answer the question "yes" or "no."

446. (R. p. 4095) Respondent excepts to the ruling of the trial examiner striking the following answer of the witness Hostetler, upon cross examination: "They were all persons present who participated in the opening of the envelopes and the sorting of the ballots, could see the fact that they were obviously counterfeit."

447. (R. p. 4095) Respondent excepts to the action of the trial examiner in connection with the instructions he gave the witness Hostetler, and the manner in which he gave such instructions.

448. (R. p. 4105) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Gibson to testify as to whether he received any direction from any foreman or other officer of respondent that he should work in respondent's plant in the event of a strike. (See respondent's offer to prove.)

449. (R. pp. 4113-4115) Respondent excepts to the ruling of the trial examiner striking the testimony of the witness Gibson relating to the action of the strikers in sending a moving freight train into respondent's plant unmanned by any crew, and the effects thereof in the plant.

450. (R. p. 4165) Respondent excepts to the ruling of the trial examiner refusing to permit respondent's witness Greenwald to testify, upon direct examination, as to his reason for attempting to leave respondent's Canton plant during the strike.

451. (R. p. 4167) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibit No. 18, being one of a number of leaflets dropped from an aeroplane on to a group of respondent's employees who were working in the Canton plant during the strike.

(The Board, at p. 3 of the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, held that this exhibit would be admitted.)

452. (R. p. 4271) Respondent excepts to the ruling of the trial examiner permitting the Board, over respondent's objection, to interrogate the witness Hopkins, upon cross examination, as to whether there were any machine guns in respondent's plant during the strike.

453. (R. p. 4279) Respondent excepts to the manner and form of the admonition of the trial examiner to the witness Hopkins, as follows: "Just a minute. It doesn't make any difference about what you tried to tell them. The fact is—did you or didn't you?"

454. (R. pp. 4308-4309) Respondent excepts to the action of the trial examiner and the manner in which he undertook the examination of the witness Hopkins.

455. (R. p. 4341) Respondent excepts to the ruling of the trial examiner refusing to permit respondent's witness James Davey to testify as to whether he intended to return one Verne Holderman to work for respondent on the occasion of a conference between the witness and said Holderman on or about the 21st of July.

456. (R. p. 4342) Respondent excepts to the ruling of the trial examiner refusing to accept respondent's offer to prove in connection with the question asked of the witness James Davey as to whether he intended to return one Verne Holderman to work on July 21, 1937.

457. (R. p. 4342) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to ask the witness James Davey, the following question: "What, if anything, did you intend to do on the 21st of July?"

458. (R. p. 4348) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to

strike the following answer of the witness James Davey: "I think probably at different times I have talked about representative plans."

459. (R. p. 4348) Respondent excepts to the statement of the trial examiner in respect to the above answer of the witness James Davey, as follows: "Those are things that do not mean anything. Either you did or you didn't do it."

460. (R. p. 4363) Respondent excepts to the ruling of the trial examiner striking the following answer of the witness Davey elicited by the Board upon cross examination: "I do not know. No, sir. I have eight hundred headaches to care for and I don't know."

461. (R. p. 4383) Respondent excepts to the ruling of the trial examiner striking a part of the answer of the witness Stewart, as follows: "When we got back to work, we got to talking and we thought we needed an organization to protect ourselves."

462. (R. p. 4388) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Stewart, as follows: "Well, the opinion of the men was that we should have some—."

463. (R. p. 4428) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Morgan to testify as to whether or not he signed the back-to-work petition of his own free will.

464. (R. p. 4428) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Morgan that he signed the back-to-work petition of his own free will.

465. (R. pp. 4428-4429) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Morgan to testify, upon direct examination, as to whether

or not he was influenced in any way whatsoever in the signing of the back-to-work petition at Massillon by anything that was said or done by respondent or any of its officers or agents.

466. (R. p. 4429) Respondent excepts to the ruling of the the trial examiner striking the answer of the witness Morgan that he was not influenced in any way in signing the back-to-work petition by anything that was said or done by respondent or any of its officers or agents.

467. (R. p. 4430) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Morgan to testify, upon direct examination, as to whether he had signed an application for membership in the Independent Association of Republic Employees of his own free will.

468. (R. p. 4430) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Morgan that he signed an application for membership in the Independent Association of Republic Employees of his own free will.

469. (R. pp. 4430-4431) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Morgan to testify, upon direct examination, as to whether or not he was influenced in the signing of an application card for membership in the Independent Association of Republic Employees by anything that was said or done by respondent or any of its officers or agents.

470. (R. p. 4431) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Morgan that his signing of the application card for membership in the Independent Association of Republic Employees at Massillon was not influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

471. (R. p. 4438) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Ream to testify upon direct examination as to whether or not he signed the back-to-work petition of his own free will.

472. (R. p. 4438) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Ream that he signed the back-to-work petition of his own free will.

473. (R. p. 4439) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Ream to testify as to whether or not he was influenced in any manner by respondent, its officers or agents, in signing the back-to-work petition.

474. (R. p. 4439) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Ream that he was not influenced in signing the back-to-work petition by anything that was said or done by respondent or any of its officers or agents.

475. (R. p. 4441) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Ream to testify, upon direct examination, as to whether he signed the application for membership in the Independent Association of Republic Employees of his own free will.

476. (R. p. 4441) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Ream that he signed the application for membership in the Independent Association of Republic Employees of his own free will.

477. (R. pp. 4441-4442) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Ream that he signed the membership card in the Independent Association of Republic Employees of "my own free will."

478. (R. p. 4442) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Ream to testify upon direct examination, as to whether he was influenced to any extent whatsoever in signing the application for membership in the Independent Association of Republic Employees at Massillon, Ohio, by anything that was said or done by respondent or any of its officers or agents.

479. (R. p. 4442) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Ream that, in signing the application card for membership in the Independent Association of Republic Employees at Massillon, Ohio, he was not influenced by anything whatsoever that was said or done by respondent or any of its officers or agents.

480. (R. p. 4446) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Garber to testify, upon direct examination, as to whether he signed the back-to-work petition at the Massillon plant of his own free will.

481. (R. pp. 4446-4447) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Garber that he signed the back-to-work petition of his own free will.

482. (R. p. 4447) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Garber to testify, upon direct examination, as to whether or not he was influenced in any manner whatsoever in the signing of the back-to-work petition at Massillon, Ohio, by anything that was said or done by respondent or any of its officers or agents.

483. (R. p. 4447) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Garber that he was not influenced in any manner whatso-

ever in the signing of the petition to return to work in Massillon, Ohio, by anything that was said or done by respondent or any of its officers or agents.

484. (R. p. 4448) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Garber to testify as to whether or not he signed the application card for membership in the Independent Association of Republic Employees of his own free will.

485. (R. p. 4449) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Garber to testify, upon direct examination, as to whether he was influenced to any extent whatsoever in signing the application card for membership in the Independent Association of Republic Employees by anything that was said or done by respondent or any of its officers or agents.

486. (R. p. 4449) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Garber that, in signing the application card for membership in the Independent Association of Republic Employees, he was not influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

487. (R. pp. 4453-4454) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Donant to testify, upon direct examination, as to whether he signed the back-to-work petition at the Massillon plant of his own free will.

488. (R. pp. 4453-4454) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Donant that he signed the back-to-work petition of his own free will.

489. (R. p. 4454) Respondent excepts to the ruling of the trial examiner refusing to permit the witness

Donant to testify, upon direct examination, as to whether or not he was influenced in any manner whatsoever in signing the back-to-work petition at Massillon, Ohio, by anything that was said or done by respondent or any of its officers or agents.

490. (R. p. 4454) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Donant that he was not influenced in any manner whatsoever in signing the petition to return to work in Massillon, Ohio, by anything that was said or done by respondent or any of its officers or agents.

491. (R. p. 4455) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Donant to testify as to whether or not he signed the application card for membership in the Independent Association of Republic Employees of his own free will.

492. (R. p. 4455) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Donant to testify, upon direct examination, as to whether he was influenced to any extent whatsoever in signing the application card for membership in the Independent Association of Republic Employees by anything that was said or done by respondent or any of its officers or agents.

493. (R. p. 4456) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Donant that, in signing the application card for membership in the Independent Association of Republic Employees, he was not influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

494. (R. pp. 4461-4462) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Stevens to testify, upon direct examination, as to

whether he signed the back-to-work petition at the Massillon plant of his own free will.

495. (R. pp. 4461-4462) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Stevens that he signed the back-to-work petition of his own free will.

496. (R. pp. 4465-4466) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to call and question further and additional witnesses, to the number of approximately two thousand, respondent's employees at respondent's Massillon plants, each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they did not wish to go on a strike but did wish to continue at work at the Massillon plants of the respondent, and that they signed the back-to-work petition at Massillon and application cards for membership in the Independent Association of Republic Employees (Massillon plants) of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents.

(See in this regard statement of respondent's counsel and offer to prove in respondent's behalf, R. pp. 4505 and 4507.)

497. (R. pp. 4469-4470) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Grau to testify, upon direct examination, as to whether he had signed the application card for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

498. (R. pp. 4469-4470) Respondent excepts to the ruling of the trial examiner striking the answer of the

witness Grau that he signed the application card for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

499. (R. pp. 4471-4472) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Grau to testify, upon direct examination, as to whether, in signing the application card for membership in the Steel Workers of America, he was influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

500. (R. p. 4472) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Grau that he was not influenced to any extent whatsoever in signing the application for membership in the Steel Workers of America by anything that was said or done by respondent or any of its officers or agents.

501. (R. p. 4476) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Smith to testify, upon direct examination, as to whether he signed the application for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

502. (R. p. 4476) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Smith that he signed the application for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

503. (R. p. 4477) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Smith to testify, upon direct examination, as to whether, in signing the application card for membership in the Steel Workers of America, he was influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

504. (R. p. 4477) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Smith that he was not influenced to any extent whatsoever in signing the application for membership in the Steel Workers of America by anything that was said or done by respondent or any of its officers or agents.

505. (R. pp. 4482-4483) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Mortenson to testify, upon direct examination, as to whether he had signed the application card for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

506. (R. pp. 4482-4483) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Mortenson that he signed the application for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

507. (R. p. 4483) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Mortenson to testify, upon direct examination, as to whether, in signing the application card for membership in the Steel Workers of America, he was influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

508. (R. p. 4483) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Mortenson that he was not influenced to any extent whatsoever in signing the application for membership in the Steel Workers of America by anything that was said or done by respondent or any of its officers or agents.

509. (R. p. 4494) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Markley to testify, upon direct examination, as to whether he had signed the application card for membership in the Steel

Workers of America in respondent's Canton plant of his own free will.

510. (R. p. 4494) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Markley that he signed the application for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

511. (R. p. 4495) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Markley to testify, upon direct examination, as to whether, in signing the application card for membership in the Steel Workers of America, he was influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

512. (R. p. 4495) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Markley that he was not influenced to any extent whatsoever in signing the application for membership in the Steel Workers of America by anything that was said or done by respondent or any of its officers or agents.

513. (R. pp. 4502-4503) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Gerke to testify, upon direct examination, as to whether he signed the application card for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

514. (R. pp. 4502-4503) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Gerke that he signed the application for membership in the Steel Workers of America in respondent's Canton plant of his own free will.

515. (R. p. 4503) Respondent excepts to the ruling of the trial examiner refusing to permit the witness Gerke

to testify, upon direct examination, as to whether, in signing the application card for membership in the Steel Workers of America, he was influenced to any extent whatsoever by anything that was said or done by respondent or any of its officers or agents.

516. (R. p. 4503) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Gerke that he was not influenced to any extent whatsoever in signing the application for membership in the Steel Workers of America by anything that was said or done by respondent or any of its officers or agents.

517. (R. p. 4505) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to call and question further and additional witnesses, to the number of approximately twenty-five hundred, respondent's employees at respondent's Canton plant, each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they did not wish to go on a strike but did wish to continue at work at the Canton plant of the respondent, and that they signed application cards for membership in the Steel Workers of America (Canton plant) of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents.

(See in this regard statement of respondent's counsel and offer to prove in respondent's behalf, R. pp. 4508-4509.)

RESPONDENT'S EVIDENCE AT YOUNGSTOWN HEARING BEFORE TRIAL EXAMINER.

518. (R. p. 4516) Respondent excepts to the ruling of the trial examiner striking out the word "persuasion,"

and instructing the witness Richmond, acting Captain of Police at Youngstown, Ohio, as to the manner in which to testify.

519. (R. p. 4517) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Richmond as to his being stopped by pickets.

520. (R. p. 4519) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Richmond on the ground that he used the word "blockade."

521. (R. p. 4526) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Richmond with regard to the word "confusion."

522. (R. pp. 4526-4527) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Richmond as to who was in charge of the C. I. O. when the testimony showed that the witness had personal knowledge of the facts in that regard.

523. (R. p. 4528) Respondent excepts to the conduct and action of the trial examiner, as showing his apparent bias, in striking an answer of the witness Richmond as to the conduct of pickets, without any objection thereto having been made by the Board.

524. (R. p. 4529) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Richmond that two policemen were injured.

525. (R. pp. 4534-4535) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike the answer of the witness Richmond as to the space under the Market Street Bridge being under the control of the county.

526. (R. p. 4573) Respondent excepts to the ruling of the trial examiner sustaining the Board's objections and motions to questions asked of the witness Richmond by respondent pertaining to violence at Stop 5, Youngstown, Ohio, which objections and motions are substantially as follows: (See, also, statement of trial examiner with reference to his rulings, on page 4697).

R. p. 4517: Objection to the line of inquiry as to "* * * what the pickets did at that particular time * * *."

R. p. 4518: Objection as to conduct of the pickets blockading the road.

R. p. 4524: Objection to the line of inquiry "* * * with respect to June 9th * * *."

R. p. 4537: Motion to strike from the record "* * * all of the evidence with respect to the June 9th incident."

R. p. 4538: Objection to evidence respecting acts of violence of individual pickets or members of the C. I. O.

R. p. 4548: Objection to testimony concerning violence by unidentified persons similar to testimony already given with respect to June 9th.

R. p. 4549: Objection to testimony concerning incidents on June 9th with a motion to strike the same and objection to similar testimony that might be offered with respect to incidents on June 19th concerning which the Board had offered no evidence in chief.

R. p. 4552: Objection to introduction of any evidence of alleged acts of violence on June 9th and June 19th, 1937 and to this general line of inquiry.

527. (R. p. 4573) Respondent excepts to the ruling

of the trial examiner sustaining the Board's objection to the admission of evidence offered by the respondent and tending to prove and establish continued, concerted and wholly unprovoked and unlawful acts and conduct upon the part of strikers, pickets and persons affiliated with the C. I. O. and the S. W. O. C., in whose behalf the complaint herein is filed, consisting of unlawful picketing, unlawful assemblage, riot, violence and lawless conduct in and about the respondent's Youngstown plants and its Warren and Niles plants, all as is set forth and described in respondent's offer to prove with relation to the Youngstown and Warren and Niles districts, said offer to prove being a document consisting of sixty pages embodying the proffered testimony of approximately seventy-five witnesses, and presented to the trial examiner and marked Respondent's Exhibit 50, at pages 5498, 5499, 5500 of the record (Cleveland hearing).

528. (R. pp. 5014-5015-5016, 5498) Respondent excepts to the ruling of the trial examiner in not permitting respondent to call to the witness stand, each separately and individually, and to examine and question, each separately and individually, approximately seventy-five witnesses from the Youngstown and Warren and Niles districts, respectively, whose testimony, if received would tend to prove unlawful conduct upon the part of pickets, strikers and persons affiliated with the C. I. O. and S. W. O. C., as described in respondent's exception No. 527. And respondent excepts to the ruling of the trial examiner in refusing to permit respondent to present separate and individual offers to prove as to each of said witnesses in the event his evidence was excluded by the trial examiner.

529. (R. p. 4583) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Cummings, upon direct examination, as to his purpose in circulating a petition

through the machine shop. (See different ruling of the Board, Record page 37.)

530. (R. p. 4587) Respondent excepts to the conduct and action of the trial examiner in connection with statements made respecting leading questions, in lieu of ruling on an objection made.

531. (R. p. 4589) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Cummings that the mechanical department had a number of meetings.

532. (R. p. 4596) Respondent excepts to the remarks and conduct of the trial examiner striking the word "active" and stating "you can only tell what they did," as compared with the latitude given by the trial examiner to witnesses for the Board.

533. (R. p. 4598) Respondent, for the same reason as stated in the preceding exception, excepts to the action of the trial examiner in striking, upon his own motion, the word "officially" from the question asked by respondent of the witness Cummings.

534. (R. p. 4599) Respondent excepts to the ruling of the trial examiner sustaining an objection of the Board, by which the witness Cummings was not permitted to state that a constitution and by-laws were adopted at a meeting, but was only permitted to state that a vote was taken.

535. (R. p. 4637) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Smith, upon direct examination, as to whether or not there was any discussion at a meeting in connection with the strike question. Respondent further excepts to the ruling upon this question and upon numerous other questions whereby the trial examiner imposed a rigid application of

the rules of evidence as to witnesses for respondent which he did not impose as to witnesses for the Board.

536. (R. pp. 4638-4639-4640) Respondent excepts to the ruling of the trial examiner striking answers of the witness Smith, upon direct examination, as to what he heard said by those present at a particular meeting, and to the conduct and statements of the trial examiner imposing a stricter rule of evidence upon respondent's witnesses than was imposed upon witnesses for the Board.

537. (R. pp. 4648-4649) Respondent excepts to the ruling of the trial examiner sustaining an objection of the Board to a question asked by respondent of the witness Smith, upon direct examination, as to whether or not the Independent Federation referred to was a separate organization.

538. (R. p. 4661) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Smith, upon cross examination, that the holding of a meeting was common knowledge around the plant.

539. (R. pp. 4681-4682) Respondent excepts to the ruling of the trial examiner permitting the introduction of Board's Exhibit No. 113, purporting to be a telegram sent to Frances Perkins by the witness Smith on June 23, 1937.

540. (R. pp. 4688-4690-4756) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibits Nos. 25 and 26, being panoramic photographs of the vicinity of the Stop 5 entrance to respondent's Youngstown plant, taken by the witness McGranahan.

541. (R. pp. 4697-4698-4699-4757) Respondent excepts to the ruling of the trial examiner excluding Respondent's Exhibit No. 27, purporting to be a map showing the

vicinity of Stop 5, Youngstown, Ohio, prepared by the witness Haenny.

542. (R. pp. 4709-4710) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question and striking the testimony of the witness McCreary in answer thereto, upon direct examination, as to why he did not go to his work and home again, and back to his work each day as he formerly had done before the strike, the answer of the witness being that he was "afraid to get (his) my head knocked off." Respondent further excepts to the ruling of the trial examiner in not permitting respondent to make an offer to prove after the motion was sustained and the answer stricken out.

543. (R. pp. 4710-4711) Respondent excepts to the ruling of the trial examiner striking an answer "yes" made by the witness McCreary to the question as to whether he had observed pickets in and about respondent's plant at Youngstown; and respondent further excepts to the action of the trial examiner and the remarks made by him, on the ground of bias and prejudice, when he chastised the witness for answering a question to which an objection was interposed, when, in fact, the question was answered before the Board interposed an objection thereto, and in view of the fact that he did not adopt the same procedure when numerous other witnesses answered questions before an objection was made.

544. (R. pp. 4714-4715-4719-4720) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to the question "Describe what you saw." Respondent further excepts to the ruling of the trial examiner prohibiting respondent from making an offer to prove concerning the above question asked upon direct examination. Respondent also excepts to the scope of the trial examiner's ruling with relation to acts of violence and con-

duct of pickets at Youngstown, as stated by the trial examiner on page 4720 of the Record.

545. (R. pp. 4721-4722) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness McCreary upon direct examination, as to why he did not attempt to go out of the gate when he left the plant. Respondent further excepts to the ruling of the trial examiner prohibiting respondent from making an offer to prove respecting said question.

546. (R. pp. 4725-4726) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to questions asked of the witness McCreary, upon direct examination, respecting the efforts of said witness to get back into the plant and go to work during the strike and respecting acts of violence committed upon him.

547. (R. pp. 4732-4733) Respondent excepts to the ruling of the trial examiner, and to the conduct and actions of the trial examiner as tending to show bias upon his part, in overruling respondent's objection to a series of questions asked of the witness McCreary, upon cross examination, when it clearly appears that the witness did not understand the questions; and respondent excepts to the statements made by the trial examiner that the witness was not confused.

548. (R. pp. 4735-4736) Respondent excepts to the ruling of the trial examiner sustaining the Board's motion to strike an answer of the witness McCreary, upon cross examination, to the effect that there was a ruling against going into the plant and that the ruling, as he understood it, had been made by the Governor.

549. (R. p. 4746) Respondent excepts to the ruling of the trial examiner sustaining an objection and a motion

to strike by the Board with reference to the following answer of the witness Parilla when asked, upon direct examination, what he observed: "A barricade there with many people congregated there."

550. (R. p. 4747) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to the following question asked of the witness Parilla, upon direct examination: "* * * I wish you would describe what it was that you referred to as a barricade."

551. (R. p. 4751) Respondent excepts to the ruling of the trial examiner sustaining Board's objection and striking an answer of the witness Parilla, upon direct examination, that he saw persons who were wearing the C. I. O. insignia carrying clubs.

552. (R. pp. 4751-4752) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to the following question asked of the witness Parilla, upon direct examination: "What did they have in their hands?"

553. (R. pp. 4768-4769) Respondent excepts to the conduct of the trial examiner, as showing bias and prejudice, relating to the manner in which he sought to prevent the witness Carney from testifying upon direct examination as to the offense to which Jerry Simcox pleaded guilty in the Municipal Court, Youngstown, Ohio.

554. (R. pp. 4810-4811) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Mondoro, upon direct examination, as to whether there was any interference with him in the performance of his duties as an employees' representative.

555. (R. p. 4814) Respondent excepts to the ruling of the trial examiner sustaining an objection to a ques-

tion asked the witness Mondoro, upon direct examination, as to whether or not he was influenced by any one in the performance of his duty as an employees' representative.

556. (R. pp. 4852-4853, 4853-A, 4853-B, 4853-C, 4853-D, 4853-E, 4853-F) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Quinlan, upon direct examination, as to what the record showed as to whether or not one Walter Chismus had been indicted for any offense.

557. (R. p. 4862) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Gillen the statement that persons in the mill seemed perfectly satisfied.

558. (R. pp. 4867-4868) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Gillen a statement that "a fellow got his car upset," which occurrence, as clearly appears from the record, aided the witness in fixing the time or the occasion when he saw the greatest number of pickets at the corner of Pine and Walnut Streets, Youngstown, Ohio.

559. (R. pp. 4869, 4870, 4871, 4872, 4873, 4873-A) Respondent excepts to the action of the trial examiner in striking, upon his own motion, a statement from the answer of the witness Gillen, who, when asked by the Board as to the date when he observed pickets upon the streets of Warren, Ohio, stated that he thought it was the 2d of May, and then attempted to fix the date more definitely by stating that it was the day "* * * the fellow got arrested." Respondent further excepts to the wholly unprovoked conduct of the trial examiner in severely chastising the witness Gillen and censuring counsel for respondent without any justification or excuse therefor.

560. (R. pp. 4883-4888, inc.) Respondent excepts to

the ruling of the trial examiner striking the answer of the witness Gillen that pickets had baseball bats in their hands. Respondent further excepts to the statements made by the trial examiner as to the exclusion of all testimony relating to violence.

561. (R. pp. 4914-4915-4916-4917-4920) Respondent excepts to the ruling of the trial examiner sustaining the Board's objections and motions to various questions relating to violence on the part of pickets, which questions were asked of the witness Gillen on re-direct examination and were clearly proper and justified by reason of certain questions having been propounded to this witness by the Board upon cross examination.

562. (R. p. 4924) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Thomas upon direct examination, the words "* * * they started to attack him," upon the alleged ground, as stated by the trial examiner, that such words do not mean anything.

563. (R. p. 4925) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Thomas the statement that Mr. Weins seemed to be in charge of the pickets and that he acted in that capacity.

564. (R. 4927) Respondent excepts to the ruling of the trial examiner refusing to admit Respondent's Exhibit No. 36, purporting to be a pass given to the witness Thomas by a C. I. O. organizer, Gus Hall, permitting the said witness to drive over the streets of the City of Warren, Ohio. (See, also, Record page 5323.)

565. (R. pp. 4927-4928) Respondent excepts to the action of the trial examiner in striking, upon his own motion, from an answer previously given by the witness Thomas the statement that the pickets struck the witness's car with their clubs.

566. (R. p. 4932) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Thomas that portion thereof which referred to statements made to the witness by men in the mill that they were well satisfied with the conditions there.

567. (R. p. 4936) Respondent excepts to the ruling of the trial examiner striking from an answer of the witness Thomas the words "threshed out" which were included in an answer which referred to certain discussions had in the mill as to what should be done with men who desired to leave the mill and go to their homes.

568. (R. p. 4940) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Thomas, upon direct examination, as to what the pickets carried in their hands, and in striking his answer thereto, which was: "clubs."

569. (R. p. 4970) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby, upon direct examination, that he signed the back-to-work petition at Youngstown, of his own free will.

570. (R. pp. 4970-4971) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby as to how he came to sign the back-to-work petition, in which he stated that he had been through two steel strikes before and that he wanted to work.

571. (R. pp. 4971-4972) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby that he was not influenced by the respondent or any of its officers or agents in signing the back-to-work petition.

572. (R. p. 4973) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby that he signed an application for membership in

the Independent Federation of Employees at Youngstown of his own free will.

573. (R. pp. 4973-4974) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby that he signed an application for membership because he desired representation inasmuch as the Wagner Act had practically done away with the Employees Representative Plan.

574. (R. pp. 4974-4975) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Crosby that he was not influenced by the respondent or any of its officers or agents in signing the application for membership.

575. (R. p. 4980) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Thomas, upon direct examination, that he signed the back-to-work petition of his own free will.

576. (R. p. 4980) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Thomas, upon direct examination, that he wasn't influenced in any manner in signing said petition by the respondent or any of its officers or agents.

577. (R. p. 4981) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Thomas, upon direct examination, that he did not wish to go out on strike.

578. (R. pp. 4981-4982) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Thomas that he signed the application for membership in the Independent Federation of Employees of his own free will.

579. (R. p. 4983) Respondent excepts to the ruling

of the trial examiner striking the answer of the witness Thomas that, in signing said application for membership, he was not influenced to any extent by the respondent or any of its officers or agents.

580. (R. p. 4992) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Pritchard that he signed the petition to return to work of his own free will.

581. (R. p. 4992) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Pritchard that he was not influenced in any manner in signing the petition to return to work by the respondent or any of its officers or agents.

582. (R. pp. 4992-4993) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Pritchard that he did not wish to go out on strike.

583. (R. pp. 4993-4994) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Pritchard that he signed an application for membership in the Independent Federation of Employees of his own free will.

584. (R. p. 4994) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Pritchard that, in signing the application for membership in said Independent Federation, he was not influenced to any extent by the respondent or any of its officers or agents.

585. (R. pp. 4996 to 5001, inc.) Respondent excepts to the ruling of the trial examiner sustaining Board's objection whereby respondent was prevented from continuing the direct examination of the witness DeBlois.

586. (R. pp. 4996-5001) Respondent excepts to the

ruling of the trial examiner refusing to permit respondent to call and question further and additional witnesses, to the number of approximately two thousand nine hundred, respondent's employees at respondent's Youngstown plants each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they did not wish to go on a strike but did wish to continue to work at the Youngstown plants of respondent, and that they signed the back-to-work petition at Youngstown of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents, and witnesses, to the number of approximately one thousand nine hundred, respondent's employees at respondent's Youngstown plants, each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they signed application cards for membership in the Independent Federation of Republic Employees in the Youngstown plants of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents.

(See in this regard statement of respondent's counsel and offer to prove in respondent's behalf, R. pp. 4996-5001, inc. and R. pp. 5575, *et seq.*)

587. (R. p. 5002) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Krey that he did not wish to go out on strike (Warren-Niles district).

588. (R. p. 5003) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Krey that he signed an application for membership in the Em-

ployees Independent Association (Warren-Niles district) of his own free will.

589. (R. p. 5004) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Krey that he was not influenced to any extent by respondent or any of its officers or agents in signing said application.

590. (R. pp. 5005-5006) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Bonar that he did not wish to go out on strike.

591. (R. p. 5006) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Bonar that he signed an application for membership in the Employees Independent Association of his own free will.

592. (R. pp. 5006-5007) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Bonar, that, in signing said application, he was not influenced to any extent by anything that was said or done by respondent or any of its officers or agents.

593. (R. p. 5008) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Hanna that he did not wish to go out on strike.

594. (R. pp. 5008 to 5013, inc.) Respondent excepts to the rulings of the trial examiner sustaining objections and motions of the Board whereby respondent was prevented from continuing the direct examination of the witness Hanna.

595. (R. pp. 5008 to 5013, inc.) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to call and question further and additional witnesses to the number of approximately two thousand, respondent's employees at respondent's Warren and Niles

plants, each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they did not wish to go on a strike but did wish to continue to work at the Warren and Niles plants of respondent, and witnesses, to the number of approximately one thousand eight hundred, respondent's employees at respondent's Warren and Niles plants, each and all of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they signed application cards for membership in the Employees Independent Association in the Warren and Niles plants of their own free will and without being influenced in that regard in any manner whatsoever by anything that was said or done by the respondent, its officers or agents.

(See in this regard statement of respondent's counsel and offer to prove in respondent's behalf R. pp. 5009-5013, and also R. pp. 5576-5577.)

RESPONDENT'S EVIDENCE AT CLEVELAND HEARING BEFORE TRIAL EXAMINER, INCLUDING EVIDENCE RELATING TO CANTON, MASSILLON, YOUNGSTOWN, WARREN AND NILES DISTRICTS.

596. (R. pp. 5037 to 5050, inc.) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Manley, upon direct examination, as to whether any different treatment was accorded the former employees named in the complaint than that accorded other employees of respondent. Respondent further excepts to the refusal of the trial examiner to permit respondent to make an offer to prove in connection with this ruling. Respondent also excepts to the action, conduct and statements of the trial examiner in this regard, directed to counsel for respondent.

597. (R. p. 5075) Respondent excepts to the conduct of counsel for the Board in attempting to prevent respondent's witness Manley from answering a question, upon cross examination, and in asking the question the second time before the witness had an opportunity to answer it when first asked. Respondent further excepts to the action and remarks of the trial examiner reproving counsel for respondent for attempting to protect the witness against the above mentioned conduct of Board's counsel.

598. (R. p. 5096) Respondent excepts to the ruling of the trial examiner striking from an answer of the witness Manley the words "law breakers."

599. (R. p. 5104) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Manley that the biggest percentage of former employees who had affidavits filed against them would admit the truth of the charges contained therein.

600. (R. p. 5129) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Graft that one Gallagher had the appearance of a man who had been sound asleep.

601. (R. p. 5130) Respondent excepts to the ruling of the trial examiner striking the answer of the witness Graft that Gallagher did not seem to understand what the witness Graft was talking to him about.

602. (R. pp. 5161-5162) Respondent excepts to the ruling of the trial examiner striking from the answer of the witness Graft certain statements which were made to him by eight employees seeking reinstatement.

603. (R. p. 5191) Respondent excepts to the action of the trial examiner in striking, upon his own motion, from an answer of the witness Warnek, upon direct examination, the statement that certain practices of an employee com-

plained of were endangering the lives of employees working beneath him.

604. (R. p. 5207) Respondent excepts to the conduct of the trial examiner in striking, upon his own motion, an answer of the witness Putnam containing, in a statement which was otherwise clearly competent, the phrase that the employee complained of "would be organizing for the C. I. O."

605. (R. pp. 5219-5220) Respondent excepts to the ruling of the trial examiner striking an answer of the witness Putnam that he knew the company paid employees' representatives for attending meetings up until the time it became unlawful to do so.

606. (R. p. 5313) Respondent excepts to the ruling of the trial examiner overruling respondent's objection to a question asked of the witness Adhemar, upon cross examination, as to when the witness had ever placed, at approximately the same time, 500 to 1,000 men on the inactive list, when the witness had not testified that such had been done.

607. (R. p. 5556) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to a question asked of the witness Kieffer, upon direct examination, as to whether or not, after the strike was called, he wished to continue at work.

608. (R. pp. 5557 to 5559, inc.) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection and in refusing to permit respondent to continue his direct examination of the witness Powell.

609. (R. pp. 5559-5560) Respondent excepts to the ruling of the trial examiner refusing to permit respondent to call and question further and additional witnesses, to the number of approximately two thousand, respondent's employees at respondent's Cleveland plants, each and all

of whom respondent believes and stated to the trial examiner, and now states herein, would, if permitted, have testified that they did not wish to go on a strike but did wish to continue to work at the Cleveland plants of respondent.

(See in this regard statement of respondent's counsel and offer to prove in respondent's behalf R. pp. 5559-5560 and R. p. 5578.)

610. (R. pp. 5569-5570) Respondent excepts to the ruling of the trial examiner sustaining the Board's objection to the admission of evidence offered by respondent tending to prove and establish continued, concerted and wholly unprovoked and unlawful acts and conduct upon the part of strikers, pickets and persons affiliated with the C. I. O. and the S. W. O. C., in whose behalf the complaint herein is filed, consisting of unlawful picketing, unlawful assemblage, riot, violence and lawless conduct in and about respondent's Cleveland plants, all as is set forth and described in respondent's offer to prove with relation to the Cleveland district, said offer to prove being a document consisting of sixty-six pages embodying the proffered testimony of approximately two hundred witnesses and presented to the trial examiner and marked Respondent's Exhibit No. 64.

611. (R. p. 5570) Respondent excepts to the ruling of the trial examiner in not permitting respondent to call to the witness stand, each separately and individually, and to examine and question, each separately and individually, approximately two hundred witnesses from the Cleveland district, whose testimony, if received, would tend to prove unlawful conduct upon the part of pickets, strikers and persons affiliated with the C. I. O. and the S. W. O. C., as described in respondent's exception No. 610. And respondent excepts to the ruling of the trial examiner in refusing to permit respondent to present separate and indi-

vidual offers to prove as to each of said witnesses in the event his evidence was excluded by the trial examiner.

612. (R. pp. 5572-5573-5574) Respondent excepts to the action of the trial examiner refusing to admit Respondent's Exhibits Nos. 64 (described in exception 610) and 65 and 66, purporting to be a Proclamation of the Governor of Ohio, and a letter from the Governor to the Adjutant General, respectively.

Note: Certified copies of the above exhibits have been substituted in lieu of those originally offered.

613. (R. p. 5580) Respondent excepts to the statement and ruling of the trial examiner to the effect that the subpoenas for the witnesses Golden and Lind do not meet the requirement of the rules and regulations of the Board, Section 21. (See also R. pp. 5586-5587.)

614. (R. pp. 5585-5586) Respondent excepts to the ruling of the trial examiner refusing to accept respondent's written offer to prove in connection with the testimony of the witness Quinlan that the Grand Jury of Mahoning County, Ohio, had returned an indictment against Walter Chismus, one of the Board's witnesses, who had testified that respondent had discriminated against him with respect to his employment.

615. (R. pp. 5589-5590-5591) Respondent excepts to the ruling of the trial examiner admitting in evidence, after respondent had closed its case, Board's Exhibits Nos. 116 to 126, inclusive, purporting to contain data prepared by or under the direction of Pierce L. Boyer, Comptroller of respondent, pursuant to the request of counsel for the Board.

616. Respondent excepts to the action of the Board in denying a motion by the respondent for leave to intro-

duce additional evidence after the conclusion of the hearing of evidence before the Board and the Trial Examiner, said additional evidence relating for the most part to matters and things which transpired after the hearing of evidence had been concluded and relevant and competent and essential in respondent's judgment to a proper and adequate presentation of its defense herein.

REPUBLIC STEEL CORPORATION, *Respondent,*

By THOMAS F. PATTON,
DAY, YOUNG, VEACH & LEFEVER,
LYNCH, DAY, PONTIUS & LYNCH,
HARRINGTON, HUXLEY & SMITH,

Attorneys for Respondent.

August 4, 1938.

XX.

SUPPLEMENTARY ORDER ALLOTTING TIME FOR ORAL ARGUMENT

(Issued July 14, 1938)

The Board having issued Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order in the above-entitled case, and having ordered that the parties herein shall have the right on or before August 6, 1938 to file with the Board exceptions and briefs in support of such exceptions, and having further ordered that a hearing be held before the National Labor Relations Board on August 11, 1938 at 10 a. m. in Room 326, Shoreham Building, 15th and N Streets, N. W., Washington, D. C., for the purpose of oral argument upon any exceptions filed and upon the issues raised by the pleadings and the evidence in said case, and that the parties herein shall have the right to appear and be heard if they so desire.

It is hereby ordered that the parties herein shall each be allotted 1 hour for oral argument at the said hearing.

Dated, Washington, D. C., this 14th day of July, 1938.

By Direction of the Board:

NATHAN WITT,

Secretary.

(Se

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Owen C. Fetters, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 14th day of July, 1938, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Supplementary Order Allotting Time For Oral Argument to the following named persons, addressed to them at the following addresses:

Mr. Lee Pressman
1106 Connecticut Avenue
Washington, D. C.
69483

Mr. Luther Day
Day, Young & Veach
1420 Union Trust Bldg.
Cleveland, Ohio
69484

Mr. H. C. Pontius
Lynch, Day, Pontius & Lynch
Canton, Ohio
69485

Harrington, Huxley and Smith
1200 Mahoning Bank Bldg.
Youngstown, Ohio
69486

J. G. Ketterer
First National Bank Bldg.
Canton, Ohio
69487

Thomas Patton
Republic Building

Cleveland, Ohio
69488

Steel Workers Organizing Committee
3600 Grant Bldg.
Pittsburgh, Pa.
69489

OWEN C. FETTERS

Subscribed and sworn to before me this 14th day of July, 1938.

(Seal)

(S) Harold G. Wilson

Notary Public, District of Columbia

My commission expires May 15, 1941.

(Return Receipt Cards of those named above attached)

XXI.

PETITION FOR LEAVE TO INTERVENE

(Dated July 20, 1938)

To the Honorable, the Members of the National Labor Relations Board:

The Central Council of Steel Plants, Northern District of Republic Steel Corporation, (hereinafter referred to as the Council), respectfully petitions this Honorable Board for leave to intervene in the above entitled proceedings.

In support of this petition, the Council respectfully shows:

1. That the Council is an association of independent unions or associations of employed workers and its membership consists of labor unions whose members are in turn at the prresent time confined to employees of the Republic Steel Corporation.

Among the unions or associations which are members of the Council are the following:

Steel Workers Union of America, Canton Ohio

Steel Workers Union of America, Massillon, Ohio

Independent Federation of Republic Employees, Youngstown, Ohio

Employees Independent Association for Employees of Republic Steel, Warren District, Warren, Ohio

Cleveland Steel Workers Union of America, Cleveland, Ohio.

2. The membership of the constituent unions or as-

sociations which form the Council totals approximately 50,000 of the employees of the Republic Steel Corporation. The said members constitute more than a majority of all of the eligible employees in the respective plants represented by the various member associations.

3. The Council was formed on or about the second day of January, 1938, and by its by-laws and through resolution of the various constituent bodies, represents such constituent bodies and is their successor in interest in all matters pertaining to the instant proceedings.

4. Upon information and belief, a proposed finding of facts, proposed conclusion of law and proposed order entered by the National Labor Relations Board as of July 8, 1938, after charges filed on or about the 18th day of June, 1937, and hearings held from on or about July 21, 1937 to on or about said July 8, 1938. Of the pendency of the proceedings before the said Board neither the constituent member organizations of the Council nor the individual member organizations of the Council or any individual members of such associations received any notice, nor were they accorded an opportunity to be heard upon the matters hereinafter set forth, nor were they advised or notified that the question of the organization of the constituent member organizations was to be considered in said hearing by said Board.

5. The Council, nor its constituent member organizations, nor the individual member organizations of the Council or any individual members of such associations, received any notice nor were they accorded an opportunity to be heard, nor were they advised or notified that the question of the reinstatement of striking employees, to positions filled by the employment of men, after July 15, 1937, was to be considered in said hearing by said Board, which said reinstatement if made would violate the con-

tractual rights of employees given employment after July 15, 1937.

6. The Council and its constituent members for whom it acts, would be aggrieved by the proposed finding of facts, proposed conclusions of law and proposed order issued by the National Labor Relations Board July 8, 1938, if such proposals were made final in these proceedings in that the said order directs, among other things, that the Republic Steel Corporation and its officers and agents, shall:

> "2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:
>
> (a) Withdraw all recognition from the Plan of Employee Representation, and its successors—the Employees' Representative Association and the Independent Association of Republic Employees at Massillon; the Plan of Employee Representation, and its successors—the Employees' Representative Association, and the Steel Workers Union of America, and the Plan of Representation of Employees at Canton; the Plan of Employee Representation, and its successors—the Employee Representation Plan, and the Independent Federation of Republic Employees at Youngstown; the Plan of Employee Representation, and its successor—the Employees' Independent Association at Warren; the Plan of Employee Representation, and its successor—the Employees' Representative Association at Cleveland; the Central Council of Employee Representatives; and each of them, as the representatives of any of its employees at its plants in the Massillon, Canton, Youngstown, Warren, Niles and Cleveland districts, respectively, for the wages, rates of pay, hours of employment or conditions of work; and completely disestablish the foregoing labor organizations as such representatives;

(f) Upon application, offer to those employees at its plants in the Canton, Massillon, Youngstown, Warren, Niles and Cleveland districts (including those referred to as Group C and D in Paragraph 2 (c) above), who went on strike May 25, 1937, and thereafter, (except Charles Byers, Sidney Watkins, A. D. Scott, John Borawiec, George A. Bundas, Andrew J. Marsh and Mike Spelich), immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, in the manner provided in the section entitled "The Remedy" above; and place those employees for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in said manner, offer them employment as it becomes available;

(g) Make whole all the employees referred to in Paragraph (2) above for any losses they may suffer by reason of any refusal of reinstatement or placement upon the preferential list required by Paragraph (f) above by payment to each of them of a sum of money equal to that which each of them would normally have earned as wages during the period from five (5) days after the date of application to the date of offer of reinstatement or placement upon the perferential list, less the amount, if any, which each, respectively, earned during said period;

(h) Post immediately in conspicuous places in its plants in the Canton, Massillon, Youngstown, Warren, Niles and Cleveland districts, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating that the respondent will cease and desist in the manner aforesaid and that recognition is withdrawn from the labor organizations named in Paragraph 2 (a) above as representatives of any

of the employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that the foregoing labor organizations are completely disestablished as such representatives."

7. In Paragraphs 2 (a) and 2 (h) of the proposed order above quoted, the Republic Steel Corporation is directed to withdraw all recognition from the Council's constituent members, more particularly described in Paragraph 1 hereof, and to post notices in conspicuous places in its plants in Canton, Massillon, Youngstown, Warren, Niles and Cleveland districts, and maintain for a period of at least 60 consecutive days notices to its employees, stating that the Republic Steel Corporation will cease and desist as ordered, and refrain from recognition of said individual unions which are constituents of the intervenor.

Said intervening petitioner and its constituent members would be aggrieved by the terms of said proposed order above set out, in that it deprives the petitioner and its constituent members of the rights to which they are entitled, to bargain collectively for their members with the Republic Steel Corporation, and further deprives the individual members of the constituent associations forming the petitioner, of their contractual rights with the Republic Steel Corporation, without hearing, and without evidence justifying such deprivation, and that it disestablishes the petitioner as the bargaining agent for a majority of the employees of the Republic Steel Corporation, without justification and without due process of law.

8. In said proposed order, in Paragraph 2 (f) and 2 (g), it directs the Republic Steel Corporation to offer reinstatement to all employees at its plants on the 25th day of May, 1937, upon application of said employees. The effect of this provision if carried out, will be to deprive the individual members of the associations forming this

petitioner of their employment and their contractual rights to such employment, without hearing with respect to such rights.

The effect of this provision, if carried out, will be materially aggravated by the fact that because of changes in economic conditions, the total number of production and maintenance employees in various plants of the Republic Steel Corporation is substantially less than on May 25, 1937.

9. That the constituent members of the Council are organization in which employees participate, and which exists for the purpose in whole or in part of dealing with the Republic Steel Corporation concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and that said individual members or said constituent associations would form or join said organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or for other mutual aid or protection.

10. The Council further respectfully represents that at no time has the Republic Steel Corporation dominated or interfered with the formation or administration of said Council or any of its constituent members, or has the said Republic Steel Corporation contributed financial or other support to said Council or any of its constituent members.

Wherefore, petitioner prays that it be granted leave to intervene in this proceeding and it be heard thereon, and be given an opportunity to offer proof and establish before said Board all of the claims and allegations contained in Paragraphs 1 to 10 which were submitted in support of this petition.

Petitioner further prays that it may have such other

and further relief in the premises as to this Board may seem just.

CENTRAL COUNCIL OF STEEL PLANTS,
NORTHERN DISTRICT, REPUBLIC STEEL
CORPORATION
By (s) FRANK J. BOW,
Harter Bldg., Canton, Ohio.

(s) JOHN WALSH,
Renkert Bldg., Canton, Ohio.

United States of America
State of Ohio,
Stark County, ss:

Paul W. Horner, being first duly sworn, deposes and says that he is President of the Central Council of Steel Plant, Northern District, Republic Steel Corporation; that he has read the foregoing petition and has knowledge of the facts stated therein; that the statements made in the foregoing petition are true to the best of his knowledge and belief.

(s) PAUL W. HORNER

Sworn to before me and Subscribed in my presence at Canton, Ohio, this 20th day of July, 1938.

(s) Julia M. Repace,
Notary Public, Stark County, Ohio

(Seal)

My commission expires April 20, 1940.

XXII.

ORDER DENYING PETITION FOR LEAVE TO INTERVENE

(Issued July 26, 1938)

Charges having been filed in the above-entitled matter, a hearing having been held before the Board and a Trial Examiner duly designated by the Board, the Board having issued and thereafter having set aside its Findings and Order, and having issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, and the Central Council of Steel Plants, Northern District of Republic Steel Corporation having petitioned the Board for leave to intervene in the proceedings, and the Board having duly considered the matter,

It is hereby ordered that said petition for leave to intervene in the proceedings be, and it hereby is, denied.

Dated, Washington, D. C., July 26, 1938.

By direction of the Board:

NATHAN WITT,
Secretary.

(Seal)

XXIII.

REQUEST OF S. W. O. C. FOR EXTENSION OF TIME TO FILE EXCEPTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

(Dated August 4, 1938)

COMMITTEE FOR INDUSTRIAL ORGANIZATION

1106 Connecticut Avenue, Northwest

Washington, D. C.

Office of

General Counsel August 4, 1938 Telephone District 3582

National Labor Relations Board
Shoreham Building
Washington, DC

Att: Nathan Witt, Esq.

Re: Republic Steel Corporation and Steel Workers Organizing Committee

NLRB case C-184

Gentlemen:

As attorney for Steel Workers Organizing Committee, I request that the time within which to file exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Board in the above matter be extended to and including Tuesday, August 9, 1938.

Copies of this request are being served on the other parties to the case.

Very truly yours,

(s) LEE PRESSMAN
Lee Pressman,

Attorney for Steel Workers Organizing Committee.

Copies to: Joseph W. Henderson, Esq.,

Luther Day, Esq.,

Thomas F. Patton, Esq.,

Mortimer S. Gordon, Esq.,

Attorneys for Republic Steel Corporation.

Frank T. Bow, Esq.,

John P. Walsh, Esq.,

Attorneys for Central Council Of Steel Plants, Northern District, Republic Steel Corporation.

XXIV.

ALLOWANCE OF EXTENSION OF TIME TO S. W. O. C. TO FILE EXCEPTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

(Dated August 9, 1938)

9th August 1938

Lee Pressman, Esquire, General Counsel,
Committee for Industrial Organization,
1106 Connecticut Avenue, N. W.
Washington, D. C.

Re: Republic Steel Corp.
Case No. C-184

Dear Sir:

This will acknowledge receipt of your letter dated August 4th, and received in this office today, requesting extension of time within which to file exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Board in the above noted case, on behalf of the Steel Workers Organizing Committee.

In compliance with such request, we hereby advise you you that you have been granted until August 9th for the filing of such exceptions.

Very truly yours,
NATHAN WITT,
Secretary.

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CC-Messrs. Lynch, Day, Pontius & Lynch
Canton, Ohio
Messrs. Day, Young & Veach
1420 Union Trust Bldg.
Cleveland, Ohio

N. L. R. B. 8th Region
NBC Building
Cleveland, Ohio

XXV.

REQUEST OF S. W. O. C. FOR EXTENSION OF TIME FOR FILING BRIEF

(Dated August 4, 1938)

COMMITTEE FOR INDUSTRIAL ORGANIZATION
1106 Connecticut Avenue, Northwest
Washington, D. C.

Office of
General Counsel

Telephone District 3582
August 4, 1938

National Labor Relations Board
Shoreham Building
Washington, DC

Att: Nathan Witt, Esq.

Re: Republic Steel Corporation and Steel Workers Organizing Committee

NLRB case C-184

Gentlemen:

As attorney for Steel Workers Organizing Committee, I request that the time within which to file briefs in the above matter be extended to and including Tuesday, August 9, 1938.

Copies of this request are being served on the other parties to the case.

Very truly yours,

(s) LEE PRESSMAN
Lee Pressman,
Attorney for Steel Workers Organizing Committee.

Copies to: Joseph W. Henderson, Esq.,

Luther Day, Esq.,

Thomas F. Patton, Esq.,

Mortimer S. Gordon, Esq.,

Attorneys for Republic Steel Corporation.

Frank T. Bow, Esq.,

John P. Walsh, Esq.,

Attorneys for Central Council of Steel Plants, Northern District, Republic Steel Corporation.

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XXVI.

ALLOWANCE OF EXTENSION OF TIME TO. S. W. O. C. FOR FILING BRIEF

(Dated August 6, 1938)

6th August, 1938

Lee Pressman, Esq.
Attorney for Steel Workers Organizing Committee
1106 Connecticut Avenue, N. W.
Washington, D. C.
Dear Sir:

In re: Republic Steel Corporation

C-184

This will acknowledge receipt of your letter of August 4th, requesting extension of time within which brief may be filed in the above-noted case, up to and including August 9, 1938.

You are hereby granted until Wednesday, August 10th, 1938 for filing such brief. This privilege is extended all parties.

Very truly yours,

(s) NATHAN WITT
Nathan Witt,
Secretary.

C:C to Mr. Luther Day
Day, Young and Veach
1420 Union Trust Bldg.
Cleveland, Ohio

Mr. H. C. Pontius
Lynch, Day, Pontius & Lynch
Canton, Ohio

Steel Workers Organizing Committee
3600 Grant Bldg.
Pittsburgh, Pa.

Harrington, Huxley and Smith
1200 Mahoning Bank Bldg.
Youngstown, Ohio

J. G. Ketterer
1st National Bank Bldg.
Canton, Ohio

Thomas Patton
Republic Bldg.
Cleveland, Ohio

XXVII.

TELEGRAM RE ACTION ON PETITION TO INTERVENE

(Dated August 6, 1938)

POSTAL TELEGRAPH

PB9 56 2 EX NL

1938 AUG 6 AM I 33

CANTON OHIO 5

THE NATIONAL LABOR RELATIONS BOARD

WASHN DC

PETITION FOR LEAVE TO INTERVENE WAS FILED JULY 21ST WITH BOARD ON BEHALF OF CENTRAL COUNCIL OF STEEL PLANTS NORTHERN DISTRICT OF REPUBLIC STEEL CORPORATION. NO ACKNOWLEDGEMENT OF FILING OR RULING ON PETITION HAS BEEN RECEIVED IN THIS OFFICE STOP IS STEEL WORKERS ORGANIZING COMMITTEE A PARTY TO PROCEEDINGS PLEASE WIRE REPLY MY EXPENSE
FRANK T BOW ATTY FOR CENTRAL COUNCIL OF STEEL PLANTS NORTHERN DISTRICT OF REPUBLIC STEEL CORPN.

XXVIII.

TELEGRAM FROM N. L. R. B. IN REPLY TO TELEGRAM RE INTERVENTION

(Dated August 6, 1938)

AUGUST 6, 1938.

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

From—NW:JCB

Bureau—NLRB

Chg. Appropriation—NLRB

PB9 56 2 EX NL

FRANK T BOW ATTY FOR CENTRAL COUNCIL OF STEEL PLANTS NORTHERN DISTRICT OF REPUBLIC STEEL CORPORATION
CANTON OHIO

RE TEL REPUBLIC STEEL CASE NO. C-184. ORDER DENYING PETITION FOR LEAVE TO INTERVENE WAS MADE BY BOARD ON JULY TWENTY SIXTH AND SENT TO PARTIES. REGRET THAT BY INADVERTANCE COPY WAS NOT SENT YOU WILL SEND COPY TODAY. STEEL WORKERS ORGANIZING COMMITTEE IS A PARTY.

NATHAN WITT, SECRETARY

NATIONAL LABOR RELATIONS BOARD

XXIX.

MOTION BY RESPONDENT THAT THE RECORD BE REOPENED FOR FURTHER PROCEEDINGS AND THAT RESPONDENT BE PERMITTED TO INTRODUCE ADDITIONAL EVIDENCE

ALTERNATIVE MOTION BY RESPONDENT THAT IT BE PERMITTED TO HAVE INCORPORATED INTO AND MADE A PART OF THE RECORD SPECIFIED OFFERS TO PROVE

(Docketed August 6, 1938)

In presenting the motions subsequently herein stated, the respondent, Republic Steel Corporation, expressly avers and reasserts that the Board had no jurisdiction whatsoever under the National Labor Relations Act or the National Labor Relations Board Rules and Regulations (including Article II, Section 38 (d) thereof, upon which the Board relies), or otherwise, to make or issue its proposed findings of fact, proposed conclusions of law and proposed order issued July 8, 1938, and respondent hereby reserves all of its rights and disclaims any intention to waive any thereof, arising from rulings made or to be made on any and all motions, objections and offers to prove heretofore made or arising from exceptions taken or to be taken respecting such rulings, or respecting the proposed findings of fact, proposed conclusions of law and proposed order issued July 8, 1938.

MOTION BY RESPONDENT THAT THE RECORD BE REOPENED FOR FURTHER PROCEEDINGS AND THAT RESPONDENT BE PERMITTED TO INTRODUCE ADDITIONAL EVIDENCE

Republic Steel Corporation, respondent herein, respectfully moves that the record herein be reopened for further proceedings and that respondent be permitted to introduce additional evidence, made particularly relevant, material and essential by the issuance by the National Labor Relations Board on July 8, 1938, of its proposed findings of fact, proposed conclusions of law and proposed order, to a proper consideration thereof, to wit, evidence substantially as follows:

Specification 1: Evidence consisting of statements and proclamations by the Steel Workers Organizing Committee through the medium of its duly authorized officers, spokesmen and agencies, conclusively showing that the sole and proximate cause of the strike was respondent's refusal to sign a C. I. O. form of agreement with said Committee.

Specification 2: Evidence that prior to and/or soon after the reopening of such of respondent's plants as became involved in the strike, those of respondent's employees who had gone out on the strike and had not yet returned to their work with respondent were informed, at respondent's instance, of the fact that said plants would be, or had been, reopened, and that all persons on respondent's payrolls at the time of said strike, excepting those who had been guilty of acts of violence, or of provoking, condoning or instigating acts of violence or of indulging in other unlawful acts during said strike, would be reinstated to their former jobs with respondent upon their making applications therefor, or as soon as production had

increased sufficiently to justify adding more persons to the payrolls, wholly without any discrimination on account of union membership or lawful union activities.

Specification 3: Evidence that portions of the proposed order are wholly impossible of performance; that other portions are so utterly impracticable as to performance, and that other portions are so difficult as to performance that an enforcement thereof would unavoidably render impossible normal operation of respondent's business and would disasterously impede, obstruct and disrupt the conduct of respondent's business and cause loss to all employees through loss of work and wages, and cause confusion and discontent among employees inimical to their and respondent's interests.

Specification 4: All of that evidence heretofore offered by respondent and excluded by the Trial Examiner respecting which respondent made offers to prove, and which evidence is included in respondent's Exhibits 50 and 64.

Specification 5: Evidence in addition to the evidence heretofore offered before the Board and the Trial Examiner, that certain strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, who actively engaged and participated in the strike against respondent at its Massillon, Ohio, plant, were arrested for committing unlawful acts while carrying on said strike activities, and were found guilty of the offenses charged against them, all as appears in the files or upon the docket of the Municipal Court of Massillon, Massillon, Ohio.

Specification 6: Evidence in addition to the evidence heretofore offered before the Board and the Trial Examiner, that certain strikers, pickets, and persons affiliated

with the Steel Workers Organizing Committee and the Committee for Industrial Organization, who actively engaged and participated in the strike against respondent at its Canton, Ohio, plant, were arrested for committing unlawful acts while carrying on said strike activities, and entered pleas of guilty to, or were convicted of, the offenses charged against them, all as appears in the files or upon the docket of the Municipal Court of Canton, Canton, Ohio, and the Common Pleas Court of Stark County, Canton, Ohio.

Specification 7: Evidence in addition to the evidence heretofore offered before the Board and the Trial Examiner, that certain strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, who actively engaged and participated in the strike against respondent at certain of its Cleveland, Ohio, plants, were arrested for committing unlawful acts while carrying on said strike activities, and entered pleas of guilty to, or were convicted of, the offenses charged again them, all as appears in the files or upon the docket of the Municipal Court of Cleveland, Cleveland, Ohio.

Specification 8: Evidence that strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and Committee for Industrial Organization, while actively engaging and participating in the strike activities against respondent at its Youngstown, Warren, Niles, Canton, Massillon and Cleveland plants, caused damage to respondent's property in very substantial amounts and caused further substantial damage to the property of certain of respondent's employees who were not engaged in the strike.

Specification 9: Evidence in addition to the evidence heretofore offered before the Board and the Trial Examiner, that, after the Board, on June 14, 1938, set aside its

final findings of fact, final conclusions of law, and final order of April 8, 1938, stating that its reason for such action was in substance, so that it might take such further proceedings herein as it deemed necessary or advisable, respondent, on June 30, 1938, in writing, asked the Board to notify respondent if, as and when the Board determined to take further proceedings, so that respondent could take whatever action it deemed advisable to protect its interests, before further proceedings were had, but that without first notifying respondent as to what further proceedings it proposed to take, the Board, on July 8, 1938, made and issued its proposed findings of fact, proposed conclusions of law, and proposed order of July 8, 1938, which are substantially identical with its original findings of fact, conclusions of law, and order of April 8, 1938.

Specification 10: Evidence (correcting an offer to prove previously made herein, so as to show) that normal operations in respondent's several plants mentioned in the complaint and involved in the strike, in the sense of employing a normal working force in the light of and measured by the business then on hand, and considered in connection with its inventories on hand and the production carried on generally at the time at other steel plants comparable to those of respondent, were resumed (not necessarily in every department or mill of said plants, however) on or before July 30, 1937, except at its plants in the cities of Warren and Niles, Ohio, where such operations were resumed on or about August 30, 1937.

Specification 11: As a part of said motion, respondent respectfully requests that it be permitted now to introduce into evidence and have the same made and considered as a part of the record of the evidence herein a true copy of the copy of the findings of fact, conclusions of law and order issued by the Board on April 8, 1938,

which was sent by the Board to respondent or its counsel on or about the time of the issuance thereof, and also a true copy of the copy of the proposed findings of fact, proposed conclusions of law and proposed order issued by the Board on July 8, 1938, which was sent by the Board to respondent or its counsel on or about the date of the issuance thereof.

The foregoing motion is being made for the general reason that upon the issue joined by the complaint and the answer herein, considered in connection with the record herein, the evidence above referred to and which is herein sought to be introduced, is made particularly relevant, material and essential by the issuance on July 8, 1938, of said proposed findings of fact, proposed conclusions of law and proposed order, to a proper consideration thereof.

Respondent, stating more specifically the grounds upon which it bases its foregoing motion to introduce additional evidence herein, says:

As to the Cause of the Strike. In the complaint herein it is alleged (paragraph 16) that the strike was caused by certain alleged unfair labor practices by the respondent, as sought to be described in paragraphs 3-15, inclusive, of the complaint, "and by reason of the respondent's refusal to enter into a written agreement with the Steel Workers Organizing Committee, attempts to negotiate which had theretofore been made by the Steel Workers Organizing Committee." The unfair labor practices to which the complaint refers consist of the alleged wrongful discharge of, and refusal to reinstate, because of their union activities, etc., certain persons named in the complaint who were employees of the respondent at its various plants, and the closing down of certain of the respondent's plants at Canton and Massillon. It is the position and contention of the

respondent that the record herein contains absolutely no evidence tending to establish that the strike was caused directly or indirectly by any of said alleged unfair labor practices. On the contrary, respondent contends that all of the evidence in the record relating to this subject discloses that the strike was caused solely and proximately by the refusal of the respondent to sign a form of written agreement presented by the Steel Workers Organizing Committee, which the Board itself found was not an unfair labor practice. And the respondent further contends that the burden of proof as to the cause of the strike was upon the Board and that there is here disclosed an utter and absolute failure upon the Board's part to sustain such burden. However, the Board in its proposed findings of fact finds that although the immediate cause of the strike was, in part, the respondent's failure to sign the proposed written agreement presented to it, the fundamental cause of the strike and a substantial factor in its precipitation was a long series of unfair labor practices upon the part of the respondent. The additional evidence which the respondent seeks to offer, consisting in part as it does, of statements and proclamations by the Steel Workers Organizing Committee through the medium of its duly authorized officers, spokesmen and agencies, conclusively removes any doubt that might otherwise exist as to the actual, sole and proximate cause of the strike and establishes that the only cause for the strike was, as we have stated, the failure of the respondent to sign the proposed written agreement. The Board's proposed findings of fact and conclusions of law and order here under consideration are not final determinations by the Board, and the question involved upon the hearing of the respondent's exceptions thereto is whether the Board should make them final. If upon this issue, i. e., whether the Board should make its proposed findings and order final, either the respondent

or counsel for the Board is able to offer additional evidence which will correct a proposed finding by the Board which is not in accord with the actual facts in the case, or will serve to clarify any doubt which might otherwise exist as to it, we assume the Board will welcome such evidence and give it proper weight and consideration.

Such is the case here presented.

As to the Evidence Relating Generally to Strikers Who Have Not as yet Applied for Reinstatement. The Board proposes to order the respondent to reinstate, upon application, certain of its former employees who went out on a strike but who have not as yet been reinstated to their former jobs. There are included in this class a great number of former employees, perhaps 5,000 or more. It is and has been the position and contention of the respondent that there is no issue presented by the complaint herein relating to this class of former employees (see express statement by counsel for the respondent to this effect in the Record, pp. 4561-4562). It is respondent's further contention that the whole question of reinstating these former employees has been injected into this case for the first time by the Board's order of April 8, 1938, since set aside by the Board, and now by its proposed order issued July 8, 1938, now under consideration. Respondent submits that it should be permitted to introduce its additional evidence so as to enable it to place before the Board facts, not in the record, disclosing the situation as it exists with relation to the performance of the Board's proposed order, so that the Board may determine, *in the light of the facts as they now exist* and by the application of legal and equitable principles thereto, whether its proposed findings, conclusions and order in this regard should be made final.

Certain of the additional evidence, respondent contends, should be admitted for a further reason. The hear-

ing of evidence in this case was concluded in September, 1937, and obviously, no evidence could have been offered thereat in anticipation of facts which might or might not thereafter exist or come into being, or of an order by the Board dealing with the facts as they might be found to exist almost a year later, as does that part of the Board's proposed order now under discussion. Inasmuch as the Board proposed to require the respondent to reinstate, under the terms of its order, certain of its employees and to do so as of a date at least ten months after the hearing of evidence in this case had been concluded, is not the respondent in all fairness entitled to present additional evidence dealing with the changing factual situation as it now exists or will exist in the event the Board's proposed order in this regard is made final? This is all the respondent by said motion seeks to do.

ALTERNATIVE MOTION BY RESPONDENT THAT IT BE PERMITTED TO HAVE INCORPORATED INTO AND MADE A PART OF THE RECORD SPECIFIED OFFERS TO PROVE

As an alternative motion, and in event the foregoing motion shall be overruled respecting one or more of its eleven specifications, respondent respectfully moves that as to each such specification so overruled, respondent be permitted to have incorporated into and made a part of the record in this proceeding, a corresponding offer to prove as follows:

1. Corresponding to said specification 1, respondent submits the following offer to prove:

That as quoted in the report, printed for use of the Committee on Post Officers and Post Roads by the United States Government Printing Office, of Hearings Before The

Committee On Post Offices and Post Roads, United States Senate, Seventy-fifth Congress, First Session, on S. Res. 140, held from June 11 to June 24, 1937, one Philip Murray testified under oath in said hearings in part, as follows:

> "I am chairman of the Steel Workers' Organizing Committee and vice president of the United Mine Workers of America." (P. 41 of said report)

and in part, further as follows:

> "On May 26, 1937, a strike was called by the official representatives of all of the lodges of steel workers of the Amalgamated Association of Iron, Steel & Tin Workers of North America in the plants of the Republic, Inland, Youngstown, and Bethlehem companies. This strike went into effect at 11 p. m. on May 26, 1937." (P. 43 of said report)

That on or about May 4, 1937, B. J. Damisch, Steel Workers Organizing Committee leader in the Cleveland area, made the following statement:

> "We do not like to strike but we don't want them to think that we're afraid. We will not run away from the battle. What was good enough for United States Steel Corporation units certainly ought to be good enough for Mr. Girdler."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 5, 1937, Mr. Greggs, President of Campbell Lodge, of the C. I. O. made the following statement:

> "It was clear that the men would be satisfied with nothing less than a signed agreement."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 6, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made a

statement in which he said in part that he warned the independents that the union would call a strike if necessary, to win agreements on wages, hours and working conditions, and further said that the independents had formed an "unholy alliance" against contracts with the Committee and as a result would face a crisis in their coal mines "within forty-eight hours".

Respondent believes that a witness, if permitted, would so testify.

That on or about May 10, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, stated that the union would force such pacts even if it were compelled to "go to a court of last resort, a strike".

Respondent believes that a witness, if permitted, would so testify.

That on or about May 13, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made the following statement:

> "So great has been the pressure put on us by our union members to secure written collective bargaining contracts we don't feel justified in continuing longer fruitless efforts to persuade these companies to sign contracts where there is every reason to believe they have no intention whatever of doing so."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 13, 1937, a pamphlet was issued by Warren Lodge No. 1375, which stated in part as follows:

> "We are opposed to strikes but are determined to secure our legal rights which are guaranteed to every free American citizen. * * * The union is ready to sign. The responsibility for peace and harmony in this community now rests solely with the Republic Steel Corporation."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 14, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made the following statement:

> "If the managements of Republic and Sheet & Tube persist in refusing to sign contracts a strike is inevitable. I cannot say whether that will be today, tomorrow or Sunday but it is inevitable."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 14, 1937, Mr. Mayo, President of the Republic Lodge of C. I. O. in Youngstown, Ohio, made the following statement:

> "Something definite will come from Saturday's conference which may result in steps to compel Republic and Sheet & Tube to sign a contract with CIO."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 14, 1937, B. J. Damisch, Steel Workers Organizing Committee leader of the Cleveland area, made the following statement:

> "Saturday is the deadline for agreement for Republic to sign a contract with the SWOC."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 14, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made the following statement:

> "If the management of Sheet & Tube and Republic persist in refusing to sign contracts a strike is inevitable."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 17, 1937, Niles Republic Lodge of C. I. O. released as information for publication, that it had voted to back any plans to induce employers to sign a contract and to call a strike "if found necessary."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 26, 1937 Joe Morton, President of New Deal Lodge No. 1124, of Massillon, Ohio, made the following statement:

> "This was strictly a move of our own lodge to strike. The men want recognition of their union, a signed contract. No negotiations with local officials are planned. That's between Girdler and Murray and we'll stay out until Girdler signs."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 26, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, wired Mr. Girdler as follows:

> "The strike was precipitated by you and your associates through refusal to sign a labor agreement."

Respondent believes that a witness, if permitted, would so testify.

That on or about May 27, 1937, Mr. Mayo, President of the Republic Lodge of C. I. O. in Youngstown, made the following statement:

> "We mean to simply close the properties until a contract is agreed to."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 3, 1937, Mr. Mayo, President of the Republic Lodge of C. I. O. in Youngstown, made the following statement:

"It is refusal of Sheet & Tube and Republic to give their workmen what they are entitled to under the law which has brought about the strike. Of course the steel workers here want to work, but they want to work under protection of a signed contract. Frank Purnell and Tom Girdler can end the strike tomorrow by doing what the presidents of 157 other steel companies have done. There is no other issue. • • • Neither the Independent Federation of Republic Employees nor the Independent Society of Sheet & Tube are going to keep the steel workers from getting a contract."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 4, 1937, the following statement was made by Philip Murray, Chairman of the Steel Workers Organizing Committee speaking at an open-air mass meeting at the C. I. O. headquarters in Warren, Ohio:

"I'm prepared to say to Governor Davey that I'm not going to settle this strike until Tom Girdler places his signature on a written contract."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 4, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made the following statement:

"We won't settle until Tom Girdler signs Union contract."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 4, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, made the following statement:

"I'm not going to settle this strike until Tom M. Girdler signs an agreement."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 4, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, in an address at Warren, Ohio, stated, in part, as follows:

"We're not going to settle for anything less than a written agreement and I'm here to tell you that we're going to make Tom Girdler sign that agreement or we're going to whip him."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 4, 1937, Philip Murray, Chairman of the Steel Workers Organizing Committee, speaking at Warren, Ohio, stated in part as follows:

"I'm going to tell him (Davey) that I won't settle until Tom Girdler signs an agreement. That's positive. And Tom will sign because we're going to whip him."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 10, 1937, in a full page advertisement in the Youngstown Vindicator, signed "Steel Workers Organizing Committee" the following statement was made under the heading "Why Don't They Sign and End the Steel Strike?":

"They are idle because their workmen went on strike for a signed contract. Workmen of Youngstown Sheet & Tube and Republic want a signed contract like the workmen in 160 other steel companies have. By all the laws of morals and justice they are entitled to a signed contract."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 19, 1937, John Owens, C. I. O. Director, made the following statement:

"By Monday the searchlight of publicity will be focused on the real issues and companies refusing to sign will be condemned, not only by the President, but by every fair-minded citizen."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 19, 1937, John Owens, C. I. O. Director, speaking at Warren, stated in part as follows:

"The CIO will never cease agitating and organizing until every non-union mill in the country has signed the contract.

"• • •

"It won't end until Frank Purnell and Tom Girdler come to terms and agree to allow the workers to have their constitutional rights of a signed agreement. We have asked the workers in these steel plants to withhold their labors until Frank Purnell and Tom Girdler give them their constitutional rights of a signed agreement. We are going to continue the fight until we reach that objective."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 22, 1937, John L. Lewis, Chairman of the Committee for Industrial Organization, made a statement in part as follows:

"The C. I. O. is only asking that these four companies do what 258 other corporate entities in the steel industry already have done." (Sign a contract.)

Respondent believes that a witness, if permitted, would so testify.

That on or about June 22, 1937, John L. Lewis, Chairman of the Committee for Industrial Organization, after

meeting with the Federal Mediation Commission, made the following statement:

"* * * The Steel Workers Organizing Committee is only asking these four steel companies to do what 258 corporate entities in the steel industry have already done. The S. W. O. C. has contractual relationship with 258 companies producing and fabricating steel, which employ 440,000 men.

"There will be no compromise by the steel workers on this question."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 25, 1937, the Federal Mediation Commission issued a statement for publication which, in part, is as follows:

"The sole question therefore is whether an agreement should be reached."

Respondent believes that a witness, if permitted, would so testify.

That on or about June 27, 1937, O. L. Thomas of the Trumbull Lodge of the C. I. O. made a statement in part as follows:

"The fight has just started and as far as we are concerned it will continue until we get a signed agreement."

Respondent believes that a witness, if permitted, would so testify.

That on July 13, 1937, a telegram dated July 13, 1937, No. 1132-a, signed by Homer Downard, President, All Nations Lodge No. 1200, Steel Workers Organizing Committee, 1200P., and addressed to Tom Girdler, President—Republic Steel Corporation, was received by the addressee, which quoted in part, is as follows:

"* * * We are on strike and will remain on strike.

until we get a signed contract with you. * * *"

Respondent believes that a witness, if permitted, would produce for introduction into evidence, and properly identify the telegram so received.

That in the July 23, 1937, issue of Steel Labor (published twice a month by the Steel Workers' Organizing Committee) appears an editorial under the heading:

"A TERRIFIC BEATING",

which, quoted in part, is as follows:

> "* * * Republic Steel is the hardest hit, and is still suffering staggering losses daily because of the greatly curtailed production. Youngstown Sheet & Tube was also given terrific punishment, but the agreement just reached between that Company and the Union enables them to get back to better production.
>
> "The estimate of the losses suffered by these companies for refusing to sign a contract with the SWOC—the sole issue in the strike—does not take into account the business permanently lost. It is known that a heavy volume of business from both Republic and Sheet & Tube has gone to other companies which are assured of continued operations, because of their contracts. * * *"

Respondent believes that a witness, if permitted, would so testify.

2. Corresponding to said specification 2, respondent submits the following offer to prove:

That as the plants of Republic Steel Corporation were preparing to reopen, intensive efforts were made by respondent to acquaint all persons who had been on its payrolls at the time of the strike with the fact that the plants were to be reopened, and that subject to the exceptions hereinafter stated, their jobs were waiting for them. That this information was given to the employees in several

forms. That it was printed conspicuously in advertisements in newspapers circulating in most of the cities in which the plants affected by the strike are located. It was released as statements, or stories, or both, to the newspapers, not only in the communities in which the plants are located, but through wire services and other media of dissemination of information, and notices covering re-employment of men were sent to newspaper commentators at broadcasting stations serving the communities involved for use in their news broadcasts.

That in the advertisements and statements formally issued by respondent it was stated that all men on the payrolls at the time of the strike would be returned to their jobs, upon proper application, except such men who were guilty of acts of violence or of provoking, condoning or instigating acts of violence or other unlawful acts during said strike, and that there would be no discrimination on account of union membership or union activities.

That on June 21, 1937, an advertisement was placed in the Youngstown Vindicator, at the instance of respondent. That this advertisement was entitled "NOTICE TO EMPLOYEES OF REPUBLIC STEEL CORPORATION" and is as follows:

> "According to the direct request of thousands of our employees who desire to work, we take this means of notifying them that the Poland Avenue Gate at Stop 5 will be opened at 7:00 a. m., Tuesday, June 22nd, so that employees may return to work.
>
> "All employees should report to their foreman for assignment to their positions.
>
> "City and County authorities have assured us ample protection if needed.
>
> "Operations will be on a twelve-hour basis temporarily, with time and a half over eight hours.

"There will be no discrimination on account of Union membership. We cannot, however, rehire anyone who has been guilty of violence, or guilty of provoking, condoning or instigating acts of violence against the corporation, its employees, their homes or their families.

Republic Steel Corporation."

That the substance of the above-quoted advertisement was sent as an official statement by respondent, to all Cleveland newspapers, to all wire services, to the Dow-Jones Service, to the Universal News Service, to Iron Age, to Daily Metal Trade, to American Metal Market, and to the New York Herald Tribune.

That on June 26, 1937, an official statement was wired to the managing editors of the Pittsburgh Post Gazette, New York Herald Tribune, New York Times, Detroit Free Press, New York Sun, Pittsburgh Sun Telegraph, The Youngstown Vindicator, The Canton Repository, The Cincinnati Enquirer, The Cleveland Plain Dealer, The Associated Press, The United Press, International News Service and to a number of radio commentators. This statement quoted directly Mr. T. M. Girdler, Chairman of the Board of Republic Steel Corporation, and said in part:

"I was further misquoted in some of the press dispatches as saying that when our plants reopened Republic would refuse to rehire any former employees who had joined the C. I. O. I made no such statement and it is not true. Republic has posted notices in the plants stating its policy on the question of rehiring employees which stated that we cannot rehire anyone who has been guilty of violence or lawbreaking. I have never stated that Republic would refuse to rehire former employees just because they had joined the C. I.

O. Our employees are free to join or not join any union, as they please."

That in addition to official statements made by the respondent inviting men to return to work, newspapers published and circulated in the City of Cleveland, Ohio, carried stories announcing the reopening of the plants and the respondent's offer to return to work, without discrimination because of union membership or union activities, employees who had been on the strike.

That on July 8, 1937, respondent caused to be inserted an advertisement in the Canton Repository, published in the City of Canton, Ohio, which was in part as follows:

> "As our plants increase production, more and more employees will be called back to work. Men who were on the payroll prior to the strike will be taken back as the cases demand, except in cases where such employees have been guilty of provoking, condoning or instigating acts of violence or indulging in other unlawful acts."

That on July 10, 1937, respondent caused to be inserted in the Evening Independent published in Massillon, Ohio, an advertisement which was in part as follows:

> "As our plants increase production, more and more employees will be called back to work. Men who were on the payroll prior to the strike will be taken back as the cases demand, except in cases where such employees have been guilty of provoking, condoning instigating acts of violence or indulging in other unlawful acts."

That on July 10, 1937, respondent caused to be inserted an advertisement in the Niles Daily Times, published in the City of Niles, Ohio, which was in part as follows:

"Our position is that we will take back without medical examination all employees except those who have been guilty of violence or guilty of provoking, condoning or instigating acts of violence, or of indulging in other unlawful acts."

And that the newspapers last hereinabove named are the only newspapers published in their respective communities and are widely read in the cities and sections in which published.

Respondent believes that Edgar S. Bowerfind, a member of the firm of Messrs. Hill & Knowlton, publicists for Republic Steel Corporation and other clients, would, if permitted, so testify.

3. Corresponding to said specification 3, respondent submits the following offer to prove:

That portions of the proposed order are impossible of performance due to the radical changes in methods of manufacture employed by respondent since the advent of the strike. That said changes have been brought about by the construction of a continuous tin plate mill in Niles, Ohio, and a new strip mill in Cleveland, Ohio, and by the utilization of more modern equipment for the conditioning of steel to improve the surface. That the former method of chipping out the surface defects with a chipping hammer and chisel has, since the start of the strike, been largely supplanted with the method of burning out the defects with a scarfing torch. That these new methods have reduced the number of men necessary in several of respondent's plants and have caused the elimination of a very large number of employees in each one of the plants. That it will be impossible to replace many of these former employees on their normal jobs because the jobs

which they formerly had no longer exist. That as a result of the new mills, the Canton tin plate mill has been dismantled because it was not able to produce a kind of product required by the trade and at the same time compete with modern methods of rolling. That the new mills also have required the recent elimination of a group of tin mills called the 4-Point mills at Warren, Ohio, because the product made there ceased to be acceptable to the trade and because the operating cost was so much higher than other modern mills that it was not economical to operate them.

That the new strip mill in Cleveland, Ohio, which was finished in December, 1937, and which will further reduce the operations of the sheet mills at Massillon, Niles and Canton, Ohio, requires the employment of an entirely different kind of skilled labor than that which operated the old sheet mills used by respondent at the time the strike was started, and that it was necessary to obtain men from other plants who were familiar with this sort of specialized work. That such men were practically all hired since the start of the strike. That these men who were hired at the new Cleveland strip mill were hired without relation to any labor trouble and were hired long after the labor trouble ceased, and were of a group not found in the corporation prior to the strike. And that it would be impossible to operate said new mills and to carry on the newly instituted methods of manufacture if persons ordered reinstated under the terms of the proposed order of the National Labor Relations Board are placed in the positions of such of its present employees as do the work in said new mills and handle the newly instituted methods of manufacture.

That many of the persons ordered reinstated

have lost their skill, in part at least, due to their being away from their work for more than a year, and that putting them back to work in a large group necessarily would result in inefficiency and high cost of operation on account of increased waste of material and lessening of production, and the impairment of quality. That an impairment as to quality of production would not only cause respondent irreparable damage by the ensuing loss of business, but would necessarily cause great loss to employees through loss of work and wages. That there would, with reasonable probability, follow a substantial increase in labor injuries and fatalities.

That there are cases in certain units where approximately all employees with the longest service records have not returned to work since the strike. That to restore such employees to their former or substantially equivalent positions would mean the dismissal of all the men with the shorter service record, or dividing available work, which in many cases would be reduced from two or three days a week to one or one and a half days a week for all, and that such procedure would be productive of inefficiency and dissatisfaction among employees. That the method prescribed for reinstating men is absolutely impracticable in that if applicants are placed who have a shorter service record than those who apply later with a longer service record, they will have to be again shifted to the place required by their records, and that there being no time within which applications for reinstatement must be made under the terms of the proposed order, the ensuing and continuing confusion and disruption of operations of respondent's plants will, with reasonable probability, so interfere with respondent's

operations as to result in a loss of business, and thus in a loss of work and a decrease in its payroll. That considering the widely scattered locations of respondent's plants, that portion of the proposed order which provides that on certain conditions, strikers should be placed upon a preferential list to be given employment at any of respondent's plants before other persons are hired, places an insurmountable difficulty upon respondent's operations in that vacant positions, wherever they may occur, would be required to be kept vacant until it was determined whether or not there were available for such positions any persons ordered reinstated.

Respondent believes that Charles Herdman Elliott, Assistant Vice President in Charge of Operations of Republic Steel Corporation would, if permitted, so testify.

4. Corresponding to said specification 4, respondent re-submits as offers to prove the offers to prove previously submitted and included in respondent's Exhibits 50 and 64.

Corresponding to Specification 5, respondent submits the following offer to prove:

That 15 individuals, comprising strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, while actively engaged in the strike activities against the respondent at its Massillon, Ohio, plant, committed unlawful acts in carrying on such strike, as a result whereof each was arrested and upon trial, was found guilty of the offense charged against him, all as appears in the files and upon the docket of the Municipal Court of Massillon, Ohio, as follows:

Pete Vidovich, disturbing the peace, found guilty,

fined $15.00 and costs.

Peter Stevens, discharging firearms, found guilty, fined $25.00 and costs and 30 days.

Albert Fichter, disturbing the peace, found guilty, fined $25.00 and costs.

Tony Demando, assault and battery, found guilty, fined $15.00 and costs.

Merle Maxheimer, assault and battery, found guilty, fined $15.00 and costs.

Anthony Talenco, disturbing the peace, found guilty, fined $15.00 and costs.

Forest Ramsey, suspicion, found guilty, fined $15.00 and costs.

Rudy Stump, interfering with an officer, found guilty, fined $15.00 and costs.

Ascanio Dimazza, interfering with an officer, found guilty, fined $5.00 and costs.

Ralph Flounders, suspicion, found guilty, fined $15.00 and costs.

Walter Taylor (Tulalis), disorderly conduct, found guilty, fined $15.00 and costs.

Ernest Koontz, threatening in a menacing manner, found guilty, fined $15.00 and costs.

Byron Giltz, suspicion, found guilty, fined $15.00 and costs.

Charles Henry, suspicion, found guilty, fined $15.00 and costs.

Sherwin Alberts, suspicion, found guilty, fined $15.00 and costs.

Respondent believes that a witness, if permitted, would so testify, and that the Clerk of said Court would, if permitted, produce and identify said files and docket disclosing such facts.

Corresponding to Specification 6, respondent submits

the following offer to prove:

That 10 individuals, comprising strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, while actively engaged in the strike activities against the respondent at its Canton, Ohio, plant, committed unlawful acts in carrying on the said strike, as a result whereof each was arrested and upon arraignment or trial entered a plea of guilty to, or was convicted of, the offense charged against him, all as appears in the files or upon the docket of the Common Pleas Court of Stark County, Ohio, as follows:

Herman Herzog, charged with possession of dynamite, found guilty and sentenced to the penitentiary for from 1 to 20 years.

Peter Vaslee, charged with possession of dynamite, found guilty and sentenced to the penitentiary for from 1 to 20 years.

Jesse Runtario, charged with possession of dynamite, found guilty and sentenced to the penitentiary for from 1 to 20 years.

Omer Williams, charged with possession of dynamite, found guilty and sentenced to the penitentiary for from 1 to 20 years.

John Zgurich, charged with carrying concealed weapons, plead guilty, and placed on probation for two years.

Nick Woodrich, charged with cutting telephone wires, plead guilty and fined $250.00 and costs.

Ivan Bartalic, charged with carrying concealed weapons. Plead guilty and placed on probation for three months.

Lewis Simonelli, charged with transporting explosives, found guilty, fined $100.00 and costs.

Steve Miku, charged with carrying concealed weapons, plead guilty and placed on probation for two years.

Geo. Thomas, charged with carrying concealed weapons, indicted by Grand Jury, plead guilty, sentenced 90 days in the Work House and fined the costs.

Respondent believes that a witness, if permitted, would so testify, and that the Clerk of said Court would, if permitted, produce and identify said files and docket disclosing such facts.

That 15 individuals, comprising strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, while actively engaged in the strike activities against the respondent at its Canton, Ohio, plant, committed unlawful acts in carrying on the said strike, as a result whereof each was apprehended or arrested and upon arraignment or trail, entered a plea of guilty to, or was convicted of, the offense charged against him, all as appears in the files or upon the docket of the Municipal Court of Canton, Ohio, as follows:

2008 George Somar, charged with disorderly conduct, found guilty, fined $10.00 and costs.

2009 Ray Bednarczyk, charged with disorderly conduct, plead guilty, fined $10.00 and costs.

2051 John Bertea, charged with disorderly conduct and interfering with officer, plead guilty, fined $10.00 and costs.

2108 Samuel Stokes, charged with interfering with officer, plead guilty, fined $10.00 and costs.

2176 Louie Luda, charged with disorderly conduct, found guilty, and fined $50.00 and costs and 30 days.

2184 Joe Rosso, charged with disorderly conduct, found guilty, and fined $50.00 and costs and 30 days.

2191 E. C. Eichelberger, charged with disorderly conduct, found guilty, and fined $25.00 and costs.

2307 Mike Huegel, charged with intoxication and violating Court Order, found guilty and fined $25.00 and Costs.

2336 Andy Augustine, charged with intoxication, disturbing the peace, destruction of property, assault and battery, found guilty of assault and battery, given 30 days. Other charges dismissed.

2400 George Cundiff, charged with disturbing the peace, found guilty and fined $10.00 and costs.

2439 Ruben Jones, charged with malicious destruction of property, found guilty, paid costs.

Erardo Garcia, charged with destruction of property, struck police car with club, found guilty, given 30 day jail sentence.

E. J. Parpontzi, Discharging fire arms within the city limits, plead guilty and fined $10.00 and costs.

Otis Cesar, discharging fire arms within the city limits, plead guilty and fined $10.00 and costs.

Domonick Rossi, arrested for assault and battery resulting in injury to Glen Bechtel, 10 year old boy, tried Jan. 27, 1938, found guilty, fined $5.00 and costs and given 30 day Work House sentence. Sentence suspended.

Respondent believes that a witness, if permitted, would so testify and that the Clerk of said Court would, if permitted, produce and identify said files and docket disclosing such facts.

Corresponding to specification 7, respondent submits the following offer to prove:

That 11 individuals, comprising strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, while actively engaged in the strike against the respondent at its Cleveland, Ohio, plants, committed unlawful acts in carrying on said strike, as a result whereof each was arrested and upon trial, was found guilty of the offense charged against him, all as appears in the files or upon the docket of the Municipal Court of Cleveland, Ohio, as follows:

82048 George Cordiak, assault and battery, found guilty, fined $10.00 and costs and 10 days.

82050 John Exall, assault and battery, found guilty, fined $30.00 and costs.

81095 Peter Cushion, assault and battery, found guilty, fined $10.00 and costs and 30 days.

82660 Andrew Slusarcryk, assault and battery, found guilty, fined $5.00 and costs.

82905 Steve Cupak, assault and battery, found guilty, fined $10.00 and costs.

80664 Joseph Gonczy, Mike Urgdn, George Pelat, John Bolz, Joe Schenovsky and John Teleschak, unlawful riot and assembly, found guilty, fined $10.00 and costs.

Respondent believes that a witness, if permitted, would so testify and that the Clerk of said Court would, if permitted, produce and identify said files and docket disclosing such facts.

Corresponding to specification 8, respondent submits the following offer to prove:

That strikers, pickets, and persons affiliated with the Steel Workers Organizing Committee and the Committee for Industrial Organization, while actively engaging and participating in the strike activities against respondent at its Youngstown, Warren, Niles, Canton, Massillon and Cleveland plants, caused damage in excess of $3,500.00, to property of respondent and caused damage in excess of $7,500.00 to property of certain of respondent's employees who were not engaged in the strike.

Respondent believes that witnesses, if permitted, would so testify.

Corresponding to specification 9, respondent submits the following offer to prove:

That, after the Board, on June 14, 1938, voluntarily set aside it final findings of fact, final conclusions of law, and final order of April 8, 1938, stating that its reason for such action was so that it might take such further proceedings herein as it deemed necessary or advisable, respondent, on June 30, 1938, mailed to the Board a letter of which the following is a true copy:

"June 30, 1938

"National Labor Relations Board
Washington, D. C.

No. C-184 — In the Matter of Republic Steel Corporation and Steel Workers Organizing Committee

Gentlemen:

Enclosed please find Motion to Dismiss Complaint and Objection to Further Proceedings by Board, which we are sending to you for immediate filing.

In the event the Board overrules this motion and

objection by the respondent, will you kindly advise us if, as and when you determine to take further proceedings in this case, so that, in behalf of the respondent, we may take whatever action we deem advisable to protect its interest before such further proceedings are had.

Very truly yours,

Day, Young, Veach & LeFever,
Attorneys for Republic Steel Corporation

LD S

CC to Robert B. Watts, Acting General Counsel,

National Labor Relations Board, Washington, D. C."

Further, that said request was duly received by the Board on July 2, 1938, but that without first notifying respondent as to what further proceedings it proposed to take, the Board, on July 8, 1938, made and issued its proposed findings of fact, proposed conclusions of law, and proposed order of that date, which are substantially identical with its original findings of fact, conclusions of law, and order of April 8, 1938.

Respondent believes that a witness, if permitted, would so testify.

Corresponding to specification 10, respondent submits the following offer to prove:

That normal operations in respondent's several plants mentioned in the complaint and involved in the strike, in the sense of employing a normal working force in the light of and measured by the business then on hand, and considered in connection with its inventories on hand and the production carried on generally

at the time at other steel plants comparable to those of respondent, were resumed (not necessarily in every department or mill of said plants, however) on or before July 30, 1937, except at its plants in the cities of Warren and Niles, Ohio, where such operations were resumed on or about August 30, 1937.

And also that an offer to prove previously made herein and relating to the same subject matter as is set forth in the paragraph immediately preceding, is not accurate and should be modified to that extent which will cause such previously made offer to be made consistent with the subject matter of the offer to prove contained in the immediately preceding paragraph hereof.

Respondent believes that certain of its officers and employees would, if permitted, so testify.

Corresponding to specification 11, respondent hereby offers in evidence and requests that the same be received and considered as a part of the record of the evidence herein a true copy of the copy of the findings of fact, conclusions of law and order issued by the Board on April 8, 1938, which was sent by the Board to respondent or its counsel on or about the time of the issuance thereof, and also a true copy of the copy of the proposed findings of fact, proposed conclusions of law and proposed order issued by the Board on July 8, 1938, which was sent by the Board to respondent or its counsel on or about the date of the issuance thereof. Further, respondent hereby offers to produce, have properly marked and identified so as to be made a part of the record herein, one each of the copies of said findings of fact, conclusions of law and order of April 8, 1938, and of such proposed findings of fact, proposed conclusions of law and

proposed order of July 8, 1938, which were received by respondent, or its counsel, from the Board.

Respectfully submitted,

THOMAS F. PATTON,

DAY, YOUNG, VEACH & LEFEVER,

LYNCH, DAY, PONTIUS & LYNCH,

HARRINGTON, HUXLEY & SMITH,

Attorneys for Respondent.

XXX.

EXCEPTIONS OF CHARGING PARTY TO PROPOSED FINDINGS OF FACT, PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER, AND TO RULINGS OF THE BOARD AND THE TRIAL EXAMINER

(Docketed Aug. 9, 1938)

Steel Workers Organizing Committee, charging party herein, hereby respectfully excepts to the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order of the Board herein as follows:

(1) To said Proposed Findings of Fact in that they do not recite that the Order of the Board dated April 8, 1938, required the immediate reinstatement of all strikers on application or the placement of their names on a preferential list and payment of back wages from the date of such application to the date of such reinstatement or placement.

(2) To Sections 2 (f) and (g) of said Proposed Order insofar as they might be interpreted as applying only to employees making application to return to work after the date of said Proposed Order or any final order issued pursuant thereto, for the reason that said Sections should apply not only to such employees but to all employees making application in any manner or form and at any time between May 25, 1937, and a reasonable period after issuance and compliance by the respondent with any final order hereinafter promulgated by the Board.

(3) To Section 2 of said Proposed Order insofar as it fails to recommend the reinstatement with appropriate back pay of any employee on whose behalf charges were filed herein or evidence adduced with respect to discriminatory lay-off, discharge or refusal to reinstate, for the rea-

son that such employees are entitled to such reinstatement with back pay from the date of any application to return to work made in any manner or form and at any time between May 25, 1937, and a reasonable time after issuance of and compliance with any final order hereinafter promulgated by the Board, and from the date of such discharge or lay-off.

(4) To Section 2 of said Proposed Order insofar as it confines any remedy to employees of the respondent to the exclusion of individuals who have not obtained any other regular and substantially equivalent employment.

(5) To Section 2 (g) of said Proposed Order insofar as it may be interpreted to permit the respondent to deduct from back wages to be paid to any individual any sum which such individual may have earned on WPA or other public relief employment.

(6) To Section 6 of said Proposed Conclusions of Law in that it fails to find that respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in unfair labor practices within the meaning of Section 8, subsection 1 of the Act by its announcements that it would not enter into a signed agreement with Steel Workers Organizing Committee.

(7) To said Proposed Findings of Fact and Proposed Conclusions of Law, including the section titled "The Remedy," and to rulings of the Board and of the Trial Examiner, insofar as they conflict with or fail to support the foregoing exceptions.

Respectfully submitted,

LEE PRESSMAN,

Lee Pressman

Attorney for Charging Party.

Dated Washington, D. C.
this 9th day of August, 1938.

XXXI.

TRANSCRIPT OF ORAL ARGUMENT BEFORE N. L. R. B. AUGUST 11, 1938.

(Docketed August 12, 1938)

Shoreham Building,

Washington, D. C.,

Thursday, August 11, 1938.

The above-entitled matter came on for oral argument before the Board at 10 o'clock, a. m., pursuant to notice.

Present:

Chairman J. Warren Madden,

Board Member Donald Wakefield Smith, and

Board Member Edwin Smith.

Appearances:

Allan Rosenberg, Washington, D. C., appearing on behalf of the National Labor Relations Board.

Luther Day, 1420 Union Trust Building, Cleveland, Ohio, also Arthur J. Gentholts and E. J. Magee, Cleveland, Ohio, appearing on behalf of respondents.

Anthony Wayne Smith, Washington, D. C., appearing on behalf of Steel Workers Organizing Committee.

PROCEEDINGS

CHAIRMAN MADDEN: Republic Steel Corporation Case.

I don't know who should speak first. Counsel for the company and the Union filed exceptions to the proposed findings, and the Union is the charging party, so I suppose that it might very well proceed.

MR. DAY: Could we have a copy of the Union exceptions?

MR. WAYNE SMITH: May I say, Mr. Chairman, that I have here a copy of the exceptions that I would like now to serve on Mr. Day. Registered service was mailed to Mr. Day on the day the exceptions were filed. It is possible they were not received at the time.

MR. DAY: There is no brief?

MR. WAYNE SMITH: Because of the fact that the briefs are on the way over to me at any minute from my office, I would like to serve them in the same way. I don't have them here at the minute.

CHAIRMAN MADDEN: Copies of the briefs were sent to the Board yesterday about 6 o'clock.

MR. DAY: We do not ask for any delay, of course.

CHAIRMAN MADDEN: But there is a brief?

MR. DAY: I see.

MR. WAYNE SMITH: I might say this, also, if it is of no material difference to the other party as to who speaks first, I would like to prefer to wait, in view of the fact that the brief is on the way over, and I would like to use it in the argument.

MR. DAY: That is quite all right.

MR. WAYNE SMITH: Whatever time that is.

CHAIRMAN MADDEN: Will you proceed, then?

MR. DAY: I understand that we have one hour a side.

We have filed a motion for leave to introduce additional evidence. May we consider that that is being submitted at the same time?

CHAIRMAN MADDEN: Well, if you care to make any argument on that, you may make it, and if you want a little more time, that will be granted.

MR. DAY: No, I would not want any more time. I think whatever argument we will make with regard to that, we will kind of try and tie it in.

CHAIRMAN MADDEN: Very well.

MR. DAY: With the other arguments on the situation.

CHAIRMAN MADDEN: Very well.

MR. DAY: I want to say at the outset, as we have said in the brief and in the exceptions, in fact, in practically every paper we have filed recently in this proceeding, that we are appearing here relying upon and reasserting the contention that the Board has no jurisdiction and had no jurisdiction to make or issue the proposed findings and the proposed conclusions of law and the proposed order.

I should like to have that understood.

I think perhaps it is understood, because we have said that so many times in the various papers we have filed, and in the oral argument we will deal only with some of the questions presented here and respectfully refer the Board as to other questions to a consideration of our brief.

But, we wish to have it understood that the respondent is relying upon each and all of the exceptions which have been filed, whether they are discussed in the oral argument in detail, specifically or not.

The first point we wish to make relates to the jurisdiction of the Board, and our contention is that the Board had no jurisdiction to issue or make the proposed findings; and, I shall refer, with the Board's permission, to the proposed order, the proposed conclusions and the proposed findings

as just the proposed findings, so as to shorten matters up somewhat.

The first point I make is that the Board had no jurisdiction to set aside the order of April 8, 1938, for the purpose of taking further proceedings. The Board, being an administrative body created by statute, concededly has only the jurisdiction which the statute gives it. The jurisdiction to set aside is in 10(d) of the Act, and that is the jurisdiction to set aside the order in whole or in part, or to modify the order before—as the Board knows better than I do—a transcript is filed.

It is our contention that to set aside, as used in the Act, means to make void, to annul, and that the Board has no jurisdiction to set aside the order for further proceedings.

Our next proposition is that the Board having set aside the order of April 8th had no further jurisdiction to issue or make a proposed finding, a proposed order upon the basis that the setting aside of the order of April 8th by the Board is a sweeping away of the order for all purposes as to all intents and leaves the Board without any jurisdiction from that time on.

Both of those first two propositions were presented to the Board and saved by the respondent by the filing of proper motions which the Board denied.

Our next contention is that what the Board is proposing to do here does not, in fact, constitute the taking of further proceedings.

Assuming that in a proper case the Board had jurisdiction or has jurisdiction for further proceedings, it is our contention that what the Board proposes to do here is not that; that is, it is not the taking of further proceedings; in other words, we contend that what the Board is proposing to do now is merely to regularize the proceedings here-

tofore taken by the Board and the action of the Board in making the order of April 8th without affording to respondent a hearing.

In that connection I want to call the Board's attention to something that was said by the Supreme Court in our recent case involving the Third Circuit Court of Appeals, Ex Parte Labor Board.

In the majority opinion the Court said:

> "Counsel for Republic urges that the Board's petition to this court indicates that it does not intend irrevocably to abandon its former order but merely to regularize it and reenter it after regularization and that the Act gives no power to do this after the Board has heard the case and issued an order. We have no occasion to speculate upon the future proceedings before the Board. It is enough that the petition shows that the Board desired to and would have vacated its order had it not been restrained by the action of the Court. What the legal effect of its future proceedings may be we need not decide."

So, it is our contention that the Board made and entered on the 8th of April a final order, final conclusions of law, final findings of fact dealing with every phase of the case, embodied and set forth in a document here which, as we have a copy of it, consists of some more than one hundred, I think, mimeographed pages.

Now, that was done by the Board, we contend, without any hearing being afforded us. I will discuss that more in detail in a few moments.

Now, after that had been done and after a final order had been made and final findings of fact had been made and final conclusions of law had been made and arrived at, the decision came down, as the Board knows, in the so-called Stock Yards Case.

Then, after we had filed the petition for review in the Third Circuit Court of Appeals, the Board not having filed the transcript and the Supreme Court having held that the third circuit had no jurisdiction until the transcript was filed, set aside its order of April 8th for the purpose of taking of further proceedings as recited in the journal entry of the Board.

After the order had been set aside, as the Board knows, the proposed findings were made and issued. Now, the proposed findings are practically and substantially in all important respects identical with the original findings. That is true, substantially, as to the order, the conclusions of law, and the findings of fact.

Now, it is our contention that that does not constitute the taking of further proceedings by the Board, assuming that the Board has jurisdiction under the state of facts here presented to take further proceedings; that the refiling with slight changes, unimportant changes, under the caption and guise of proposed findings, and so forth, under the original findings, is not the taking of further proceedings, but is merely an attempt by the Board to meet the situation created by the decision in the Stock Yards Case, and, as the Supreme Court said, regularize the proceedings had before the order of April 8th issued, and which was had without any hearing being accorded the respondent.

CHAIRMAN MADDEN: Are you going to suggest—are you Judge Day?

MR. DAY: I am just Luther Day, sir.

CHAIRMAN MADDEN: Are you going to suggest what the Board might have done which would have constituted further proceedings, assuming that some of the steps that were not taken before, were necessary steps?

MR. DAY: Of course, we make the point that a situation existed here; that the order was set aside where the Board had no jurisdiction to take further proceedings at all.

Of course, I have already stated that point.

CHAIRMAN MADDEN: Well, that seems to be a very unreasonable view, assuming that a statement was made before, that all the Board can then do with the case is to throw it in the wastebasket.

MR. DAY: Our contention is on that;—and I have already stated it and I shall be very glad to restate it again,—the Board being an administrative body, has only the power that the statute gives it; that the statute gives the Board power to set the order aside.

Obviously, this is not a modification of the order. It is a setting aside of the order. And, the meaning of laying or setting aside of the order is to make null and void, and therefore, if the order is set aside, it is made null and void for all purposes.

To answer the question that you have submitted a moment ago, and assuming for the sake of the argument that the Board has jurisdiction to take further proceedings, it would seem to me that the further proceedings would be by way of correcting some error, or something of that kind, or correct some mistake that the Board had made or some misapprehension that the Board had fallen into; something of that kind.

CHAIRMAN MADDEN: Were you under the impression that this gathering here this morning was for the purpose of giving you an opportunity to persuade us that we had made a mistake and—

MR. DAY: I realize that; I realize that, but I am emphatically and respectfully making the suggestion that the Board has no jurisdiction, and I think the Board fully realizes that I am making that contention, and the fact that you are giving us the opportunity to be heard, of course, does not deprive us of the right to question at all stages the jurisdiction of the Board to proceed.

There is one more point on that question of jurisdic-

tion and that is this, that the Act does not set any standards at all to govern the conduct of the Board in the event the Board has the right to take further proceedings, and that is, the Act as construed as giving the Board jurisdiction and power to do anything that it sees fit in the nature of further proceedings;—the Act in that respect is unconstitutional because it confers a power upon an administrative body without setting any standards to govern the carrying out and execution and performance of that power.

Now, the next question we wish to argue is that respondent on the record as it now stands, a record which we believe cannot be corrected in any sense, has been denied due process of law in that the respondent has never been accorded a hearing upon the charges made against it in the complaint in this case.

This hearing began in July 1937, before the Board. The Chairman was not present but the other two members were present.

You recall we were here three or four days. Then a Trial Examiner was appointed, designated by the Board, and hearings were had before the Trial Examiner at various places, Canton, Youngstown and Cleveland on behalf of the Board, and also on behalf of the respondent.

Then the Trial Examiner concluded the hearings and left.

This being known what is known as a Board Case, the Board had under its rules the right to have the Trial Examiner, or require the Trial Examiner to make an intermediate report;—that was not done—to decide the case forthwith upon the record, to reopen the case or to make other disposition of the case.

We did not know what disposition was going to be made of this case after we got through with the hearing before the Trial Examiner. There is nothing in the rules

by which we could have been apprised of that in the rules.

About six months after the hearing before the Trial Examiner had been concluded, the Board issued its final findings, conclusions and order and issued them without any hearing being accorded to the respondent.

It wasn't a situation in which a respondent was required to ask for a hearing, because the respondent had no way of knowing what was to be done, whether there was to be an intermediate report, proceedings before the Board, or what, and the Board—

CHAIRMAN MADDEN: You speak of not having a hearing. You don't mean you didn't have a hearing! You have just said for week after week you did participate.

MR. DAY: I am very glad you made that suggestion. That was the taking of evidence before the Board and the Trial Examiner.

CHAIRMAN MADDEN: On the issues raised.

MR. DAY: On the issues raised, exactly, sir.

CHAIRMAN MADDEN: By the complaint.

MR. DAY: Right, sir, and on the issues set forth in the complaint and joined by the answer, that is true.

But, coming directly to the point, we contend that we never had a hearing, because we were never given a chance to make an argument in the case and we were never given a chance to contest in the sense that that term means in constitutional law the claims made and charges made against us in the complaint.

CHAIRMAN MADDEN: What did you think you were doing during all those weeks before the Trial Examiner?

MR. DAY: Well, we were presenting evidence.

CHAIRMAN MADDEN: Wasn't that contesting?

MR. DAY: No, no, no. It was simply the presentation of evidence, and I am glad you asked me that question.

We contend that under the decision in the Morgan

Case, the doctrine of the Morgan Case and other cases—the Morgan Case did not introduce anything radically new on that subject—that we are to get a hearing and gives us the right to contemplate an argument first. We never had that argument; and, second, it contemplates the right to contest the charges made against the respondent in this case by argument, and it contemplates more than anything else, and of the greatest importance on this phase of the case, the right to be heard by argument and in contesting the claims made against us before this Board, before the Board made up its mind; not after the Board made up its mind.

MR. DONALD WAKEFIELD SMITH: The Board has not made up its mind in this case yet. These are only proposed findings of fact. This is not a decision and order. You are being given now the opportunity now to argue.

MR. DAY: Quite true, but I make this point on that, and I want to make it respectfully but emphatically that we are not being accorded any hearing at all now; in other words, the hearing which we were entitled to as to the charges made against us in this complaint was a hearing before the Board made up its mind, not after the Board made up its mind, and in regard to the suggestion you just made, Mr. Donald Wakefield Smith, if this Board has not made up its mind, we respectfully submit that an examination of the first order of April 8, 1938, the findings of fact and conclusions of law, lead to the inevitable conclusion that the Board at that time had made up its mind, because if that were not true, why, we would find ourselves in a situation where the Board had made an order requiring us to perform a great many acts without having made up its mind whether the order ought to stand or ought not to stand, or whether or not it should be the order.

There was clearly here a making up of the mind by the Board before the order of April 8, 1938.

CHAIRMAN MADDEN: There isn't any doubt about that.

MR. DAY: I don't think there can be any doubt about that.

MR. DONALD WAKEFIELD SMITH: May I just ask, Mr. Day, whether you think that you were precluded from arguing orally before the Board prior to the issuance of the last order.

MR. DAY: You mean the last order of July.

MR. DONALD WAKEFIELD SMITH: Whether, according to the rules and regulations, you were precluded from requesting oral argument before the Board.

MR. DAY: You mean, before the order of April 8th?

MR. DONALD WAKEFIELD SMITH: That is right; yes.

MR. DAY: Well, we take this position, that it was not incumbent upon us to request anything, because we were in a position where the procedure was entirely within the hands of the Board; in other words, the Board under its own rules could not have ordered the Examiner to make an intermediate report, in which event we agreed to file exceptions to that.

The Board might decide the case forthwith upon the record; the Board might decide to give us oral argument and file briefs and your own rules read if you reach that conclusion the Board will notify us, the respondent, as to when the brief shall be filed or the arguments made.

Now, quite frankly—we cannot be of any advantage to anybody without discussing this question quite frankly. We contend that the Board made up its mind finally as to every issue in this case, made up its mind finally as to every charge in the complaint when it reached its conclusion on April 8th, and that the present proceeding is not a hearing at all, because if you take your original findings and compare them with the two findings, as you have already done,

no doubt, you will find there are a few pages changed and a few typographical corrections and some changes in the final order.

CHAIRMAN MADDEN: Mr. Day, do you expect to devote any time to the merits of this case?

MR. DAY: Yes; I am going to devote a little time to certain phases of it, and I will leave the question of whether or not we have been accorded a hearing, and whether or not we have been afforded or denied due process of law in that connection, along with what I have said and with what we say in our brief.

MR. EDWIN SMITH: Mr. Day, supposing there had not been these intervening court proceedings and what the Board had done on April 8th and what it did subsequently, namely, to issue proposed findings and order in the same terms and language as that which is now before us, will you consider that that would have constituted a fair hearing?

MR. DAY: No.

MR. DONALD WAKEFIELD SMITH: That is, without an opportunity to argue those findings?

MR. DAY: No, sir.

MR. EDWIN SMITH: Would you consider that the findings, proposed findings issued at that time, would have constituted a making up of its mind by the Board?

MR. DAY: We take the position in the brief and take the position here that the making up of proposed findings of fact, conclusions of law and order and giving what is characterized as an opportunity to us to be heard upon them, does not constitute a hearing or due process that we are entitled to.

CHAIRMAN MADDEN: Even though there had not been a finding?

MR. DAY: Yes.

CHAIRMAN MADDEN: Final finding?

MR. DAY: Yes; that we are entitled to a hearing. We are entitled to contest; we are entitled to argue; we are entitled to convince the Board, if we can, that we are right, before there is any making up of minds that here you have a final or proposed order.

CHAIRMAN MADDEN: Then, the functions of the proposed findings, as drawing the issue, you would discard that entirely as being a warning to you?

MR. DAY: Yes. We take the position that we were entitled to be heard by argument and in contesting the claim of the other side before you even make any proposed findings.

CHAIRMAN MADDEN: So, the only use which an administrative agency might make of proposed findings would be proposed findings prepared by a subordinate, for example, but without the sanction of the Board?

MR. DAY: Well, I cannot find anything, either in the Act or in the rules that has anything to do with proposed findings. I cannot find anything in the Act to that effect.

CHAIRMAN MADDEN: Well, I was speaking generally about the administrative process. The Supreme Court has said a good deal about the use of proposed findings by an administrative body and I wondered whether it was tolerable after all.

MR. DAY: Well, we don't think in this situation it was.

CHAIRMAN MADDEN: Well, this situation is no different than the other one.

MR. DAY: No, I think this is considerably different. I cannot find any jurisdiction in the Board to make proposed findings and frankly—

CHAIRMAN MADDEN: That would not be a constitutional question.

MR. DAY: And I do not think the Board would have ever considered making proposed findings except for the

decision in the Stock Yards Case. But, we have made our position on that.

MR. DONALD WAKEFIELD SMITH: May I inquire, Mr. Day?

MR. DAY: Yes, sir.

MR. DONALD WAKEFIELD SMITH: You made the argument to the Third Circuit Court of Appeals at the time on your petition for review, on the Board's order of April 8th that you had been denied due process because the intermediate report had been filed and because you were not afforded the opportunity to argue before the Board?

MR. DAY: I don't think we made that point in the Third Circuit, sir. I don't think that was involved in the proceedings in the third circuit.

Of course, we contend that the Act is unconstitutional, as construed by the Board, for reasons set forth in the Brief, and we do not expect that the Board holds the Act unconstitutional. We don't care to argue that orally.

Now, we are going to submit on brief;—because of the lack of time we have, although we have an extension of time, and we appreciate that;—the questions as to the labor organizations.

We have that quite fully discussed in the brief and we submit that on the brief.

Any detailed discussion of the labor organizations phase in this case orally would take so much time, that I think really we would be ahead if we submitted it on the brief, where it is discussed in considerable detail and which I suppose the members of the Board have already seen.

We also submit on the brief, for the same reason given, the discrimination and the discharge cases. That you will find very fully set forth.

Now, I want to come to a discussion of the facts and the merits.

Insofar as the proposed order seeks to deal with what

we have characterized generally since April 8th as the five thousand men—there might be five or six thousand men, but I call it five thousand men, and please understand I am not trying to be precise or accurate when I use that figure; those are the men, employees of Republic, the respondent, who are not specifically named in the complaint, as having been discriminated against, and those are the men which the Board in its proposed order and in its first order orders us to reinstate upon application.

Now, I take it that it is not necessary for me to deal further in calling to the attention of the Board that group of men, because I take it you all have in mind the group that I am talking about.

Now, we make several contentions with relation to that group of men, and the first is that there is no issue tendered in the complaint of this case as to those 5000 men; no issue involving their reinstatement in the complaint, and that the case was not tried before the Trial Examiner on the theory that any issue was tendered as to those five thousand men, but on the contrary was tried upon the theory that there was no issue as to those five thousand men.

Now, in the complaint you will find in paragraph 16 that because of the acts set forth in paragraphs 3 to 15, the employees of the respondents went on a strike.

Now, those acts as set forth in the complaint, paragraphs 3 to 15, consisted of discharge and discrimination cases at the various places involved in the hearing and the closing down or shutting down of our plant at Canton and our plant at Massillon.

When this case was tried and, at the present time, we submit that if you carefully examine and analyze the petition you will find no issue submitted or tendered as to those men.

When we had the hearing at Youngstown before the Trial Examiner, when we offered our evidence or were

seeking to offer our evidence, we had a question presented as to whether or not we had a right to show violations generally upon the part of the strikers.

I contend we had a right to show that for two reasons at that time:

The first was that if the strikers and those in whose behalf the complaint was filed and who filed the charges had themselves been guilty of violence and unlawful conduct, then the proceedings should not have been taken up and heard at all because they were stopped; that was the first.

The second was, we contended then as we contend now that if those named in the complaint specifically as having been discriminated against acted in concert with these other strikers, even though they were not identified, those named in the complaint were chargeable with the violence upon the part of the others, and if there was general violence, concerted violence, violence as the result of concerted action or conspiracy, then the violation of all of them would be a bar to any right on the part of these specifically named.

Now, in the course of that argument this question came up that the complaint was not broad enough to include any question as to reinstatement of those who we will call "The 5,000 men," and I said, "I want to get it into the record," I said, "I want to make this statement on the record." The Trial Examiner said, "It is on the record, but I want to talk to you" Now, there wasn't any opposition manifested on the part of the Board or the Trial Examiner. So the point I make is this, that the complaint offers no issue as to those 5,000 men, it is amplified in the brief; that being true, we were never accorded a hearing as to those 5,000 men, and the issue as to those 5,000 men and the question as to whether they should be reinstated by us upon proof as found by the Board's order is a ques-

tion that was injected into the case in the first place by the Board's own order of April 8th.

CHAIRMAN J. WARREN MADDEN: The complaint does state specifically that certain of your unfair labor practices caused the strike, does it not?

MR. DAY: Yes, sir.

CHAIRMAN J. WARREN MADDEN: And, of course, we have decided numerous times and I take it you have probably familiarized yourself somewhat with the unwritten law which was administered before you tried this case that we had, with the approval of the courts, numerous times as part of the remedy in our order, reinstated strikers.

MR. DAY: I realize that.

CHAIRMAN J. WARREN MADDEN: On this same kind of situation of the pleading.

MR. DAY: Well, I do not believe that it is justified on the pleading.

CHAIRMAN J. WARREN MADDEN: It hadn't troubled us and it hadn't troubled the judges, and you were certainly on notice of what our procedure was in that regard.

MR. DAY: Well, I think if you will examine the complaint you will find there is no such issue tendered by it. I want to state my position, I want to say now that the respondent takes the position that the complaint was not broad enough to be made the basis of any order requiring the reinstatement of any employees of the respondent now allied with the SWOC except those who are definitely named in the complaint as having been discriminated against by the respondent.

When you read the brief you will find what counsel for the Board said upon the last trial, and I think you will agree with me when you read the brief that is a part of the record, that the case was then being tried upon the

theory that the rights of men were involved only to the extent that they were rights of men and employees specifically named in the complaint, and that was the position taken by us and taken by the Board also.

CHAIRMAN J. WARREN MADDEN: I do not understand how it was taken by the Board.

MR. DAY: Well, it was taken by the Board in the arguments by the Board upon the question of the admissibility of this general testimony as to violence done by the strikers and taken by the Board when there was no question on the position we took.

CHAIRMAN J. WARREN MADDEN: Would you present evidence of violence on the part of named strikers?

MR. DAY: Yes.

CHAIRMAN J. WARREN MADDEN: For the purpose of indicating that no one of your former employees who was on strike was fit to work for you ever again.

MR. DAY: Now, we would present this evidence for the reason, and it is important because some of our additional evidence has to do with the same thing, we re-offer the evidence we offered before, and we were offering that evidence for this purpose: In the first place we said in our answer that the strikers and those affiliated with them, and so forth and so on, who filed the charges in this case upon which the complaint was filed, were themselves guilty of many acts of violence, and so forth and so on, of such a character as to bar them from the right to file the charge and hence that the Board should not have taken jurisdiction of the case.

And, second, we make the point here and we will adhere to it to the end as a sound proposition of law, that the violence of all the strikers acting in concert is chargeable against those specifically mentioned in the complaint as having been unlawfully discriminated against, and upon the theory—and there are some cases cited in our brief in

support of it—that when the man specifically named in the complaint acts as a striker in concert with others, that each and every one of those participants in that concerted action is responsible for the act of all, so that if we show that there were pickets and so forth, and so on, that indulged in lawless conduct, that lawless conduct is chargeable against and is a bar against those specifically named in the complaint.

CHAIRMAN J. WARREN MADDEN: And everybody else who is on strike.

MR. DAY: Yes; yes, sir.

CHAIRMAN J. WARREN MADDEN: Which does amount to the proposition that I suggested that no one of your former employees who is on strike is fit to work for you again, that is, fit to have any protection under the law.

MR. DAY: No, and I will answer that directly; if there was unlawful picketing here, lawless picketing, violent picketing, pickets exceeding the legal definition and limits of peaceful picketing, that from the moment that that peaceful picketing was violated, the strike was unlawful and everyone participating in that strike was not entitled to be reinstated, and I state that as a propositon of law.

CHAIRMAN J. WARREN MADDEN: Well, this is just for the purpose of this hearing; I mean, in fact, you did reinstate a great many of them, you didn't as a practical matter consider them outlaws at all, but you want us to consider them as outlaws.

MR. DAY: No, that isn't it at all. Our additional evidence shows this: That about the time that we resumed operations at our various plants we made the statement, public statement, that we were open and that we would take back any man that had not been guilty of violence.

CHAIRMAN J. WARREN MADDEN: Either personally or by his associates and by his taking part.

MR. DAY: Well, we didn't say that.

CHAIRMAN J. WARREN MADDEN: What did you mean?

MR. DAY: What those who made the statement meant I do not know, but my position would be that any man who acted in concert with others in doing acts of violence is not entitled to be taken back.

CHAIRMAN J. WARREN MADDEN: Well, that was all of them.

MR. DAY: I do not know whether it was all of them or not, it may have been practically all of them. But we think we had the right to show the conduct of these men as tending to show that it was not peaceful picketing, and therefore was unlawful.

MR. DONALD WAKEFIELD SMITH: Of course, I was one of the members of the Board who sat at the inception of this case and that question then arose, and as I recall, the disturbance occurred one and a half or two blocks from the plant where the injunction which you had secured in Canton did not apply. Now how would that injunction proceeding which you say permitted peaceful picketing—

MR. DAY: Right.

MR. DONALD WAKEFIELD SMITH: But that the picketing was not peaceful.

MR. DAY: Right.

MR. DONALD WAKEFIELD SMITH: Well, now, the evidence adduced at the hearing established that the disturbance in Massillon occurred without the jurisdiction of that injunction.

MR. DAY: Part of it, yes.

MR. DONALD WAKEFIELD SMITH: Well, the major part. It occurred at the CIO headquarters, which was a block and a half away from the plant in this county over which this injunction had effect.

MR. DAY: No, it was outside of the city, but it seems

to me it was inside of the county.

MR. DONALD WAKEFIELD SMITH: But that was picketing, it was picketing of the CIO headquarters.

MR. DAY: The first point I make as to the 5,000 men is that we were not afforded a hearing as to them, there were no charges made as to them in the complaint, and some of the additional evidence we offer bears upon that subject.

The next proposition is that the Board's order as to these 5,000 men is based upon a finding by the Board that the respondent was responsible for the strike and the respondent caused the strike. I want to spend a little time on that. The Board found that a long series of unfair labor practices was the fundamental cause of the strike and said, also, that the important cause of the strike was the failure of Republic to sign the so-called Carnegie-Illinois contract presented for signature by the SWOC. Some of our new evidence or additional evidence relates to statements made by those high up in SWOC as to the cause of the strike and tends to show that the cause of the strike and the sole cause of the strike was the failure to sign this contract.

The question as to the cause of the strike is important here, as the Board sees better than I do, because if these 5,000 men were not on a strike due to unfair labor practice on the part of the respondent, they are not entitled to reinstatement. There doesn't seem to be any question in this case about the strike as to whether or not it constituted an unfair labor practice.

We contend that there is no evidence in this record that the unfair labor practices described in the complaint caused the strike. Those unfair labor practices were the discharge and refusal to reinstate certain men. We say there is no possible causal connection between that and the strike.

The supposed finding also suggests that the strike was

due to the shut-down at Canton and Massillon. We make the same contention as to that. There is no basis of finding in this record, no connection between the strike and the closing down of the Canton and Massillon plants. As a matter of fact, at the time the men went out on strike they had already returned to work at the Canton and Massillon plants. There was no evidence introduced by the Board as to the cause of the strike. The only thing they introduced was a statement made, I think by Mr. Girdler, to the employees and perhaps to the public generally, stating that correspondence between Clinton Golden and Mr. Girdler preceding the strike had taken place, suggesting that the cause of the strike was failure to sign the contract. We make the contention as to the finding of the Board—

CHAIRMAN J. WARREN MADDEN: Might I interrupt you?

(Here followed a statement, off the record, and made to the photographers.)

MR. DAY: Now, the cause of the strike is an important question in this case. In our additional evidence here is what we have: Specific statements made by officers of the SWOC that the cause of the strike and the sole issue at stake was our refusal to sign that contract.

MR. DONALD WAKEFIELD SMITH: Were they available for presentation from the beginning, Mr. Day?

MR. DAY: Yes, yes, they were available.

MR. DONALD WAKEFIELD SMITH: And did you offer them?

MR. DAY: We did not. Now, I will tell you why: The burden of proving the cause of the strike was on the Board. When this case was finally submitted upon the evidence as we saw it there was no evidence supporting the Board's contention as to the cause of the strike, that the evidence tended to show that the cause of the strike was our refusal to sign that contract, and the Board itself said that that in

itself was not an unfair labor practice. We assumed and so state, that the Board would take judicial notice of the fact that the Republic strike was a part of the Little Steel Strike, part of the strike that involved Republic, Bethlehem, Youngstown Sheet & Tube, and Inland, and the cause of that strike, and everybody interested in it knew, and the Board said, the cause of that strike was the failure to sign that contract.

We find now a very important part of this Board's order based upon the finding that the cause of the strike was this unfair, series of unfair labor practices. We are asking the Board now for an opportunity to present this additional evidence upon the theory that if the Board made a mistake, we take it the Board will welcome the opportunity to correct any incorrect finding the Board has made upon the question, we think the Board will correct it and will welcome that opportunity.

CHAIRMAN J. WARREN MADDEN: My recollection is that the strike at Massillon preceded the rest of the strike and followed immediately upon—

MR. DAY: (Interposing) That is evident that the men went out at Canton, I think, on the 25th; the men went out at Massillon, I think, on the morning of the 26th, I think that is true.

CHAIRMAN J. WARREN MADDEN: Why would that have been a part of the strategy of the whole Little Steel strike that they should strike first at Canton where there happened to be a lock-out and strike next at Massillon where there happened also to be a similar lock-out?

MR. DAY: Well, we take it that the record claims the shut-down at Canton.

CHAIRMAN J. WARREN MADDEN: Well, I am asking you for the moment to assume that the Board is right in finding that those were lock-outs.

MR. DAY: Well, even if they were, the evidence shows

those men are back at work, that they were all back before the strike was called, at both places.

Now, of course, we contend also that there is a variance as to the cause of the strike between the complaint and the Board's findings, but I do not wish to argue that at this time.

MR. DONALD WAKEFIELD SMITH: I believe the strike first occurred at Massillon, Mr. Day, and the following day occurred at Canton; I am trying to pick out that from the record.

MR. DAY: I think the one at Canton first, that they went out at Canton first. They went out at one place on the 25th, of that I am sure, and I am also sure, as I suggested to the chairman of the Board, before the strike was called, the other difficulty was all over.

CHAIRMAN J. WARREN MADDEN: Why did they do that?

MR. DAY: They did that because of the failure to sign the contract, and the additional evidence shows that the refusal—

CHAIRMAN J. WARREN MADDEN: (Interposing) The failure to sign that contract was universal.

MR. DAY: But my recollection of the additional evidence is that it contains a statement of those in charge of the lodges at Canton and Massillon, one or both places, to the effect that the cause of the strike was the refusal to sign the contract, and if you assume that was the cause of the strike, if I am correct in that, and I take it I am, that is the answer to your question.

The next proposition as to the 5,000 men, the first was the cause of the strike, and you see the result of that just as well and better than I do and you gentlemen should hear, we contend. all of the evidence bearing upon that proposition.

We have this situation in the evidence and in the addi-

tional evidence—if we concede for the sake of argument that one of the causes of the strike was the shut-down at Canton and Massillon, the men are back at work there before the strike of Little Steel was called.

As to the discrimination cases and the discharge cases, that was all over, so that we have a case here which shows upon the undisputed evidence that the declaration of the strike by the strikers must have been because of the failure and refusal of Republic to sign that contract. The Board found that that was not an unfair labor practice, therefore, they were not employees while they continued that strike even though the motivating causes were what the Board said they were; those causes have been removed long before the time when this strike arose.

We have this situation in the order: You require us to reinstate the men at any of our plants. I want to call your attention to that. As I understand the order, it is this, and if I do not understand it, I wish you would tell me now, I am not quite sure I do understand it; you order us to put all of these strikers who have not heretofore applied for reinstatement back to work, upon application, and upon a preference list, if there is no work for them, and then to give them work, together with the men who stayed at work at our plants, in order of seniority, but at any of our plants.

I am asking for information, frankly, of the members of the Board. As I understand the order, we must reinstate those men if there is work for them. If we had new men we put those men out to make room for them, strikers who were there before the strike. So then we will have a man who remained true all the way and then reinstate a striker with the new men out.

We understand that the Board's order requires us to give them work, if work is available, and if work is not available to put them on a preferential basis and to give

them first call with seniority along with those who stayed in our plants all the time. You make that order applicable to any one of our plants. This is the question as to those men, if we have a plant down in Birmingham, Alabama, and the plant involved in Ohio, does that mean if a man is laid off, has been laid off in Birmingham, Alabama, our plant down there, and then work comes for the place that that man held, that we must consult a preferential list, and if there is a striker at our Niles plant who has worked longer for us than the man who worked for us at Birmingham that the striker at Niles gets the job? I don't know whether it means that or not; the way I interpret the order it does.

CHAIRMAN J. WARREN MADDEN: You say that would be inconvenient to you, to your management at Birmingham, to have to consult this preferential list at Niles. Suppose, on the other hand, there is a great deal of inconvenience for those men at Niles, or a particular man at Niles who hasn't got a job or a living, and balancing those two inconveniences with yours, with the inconvenience to the company, giving him an opportunity to be paid, if he is willing to go to Birmingham, is your inconvenience greater than the inconvenience to that man of trying to eat without a job?

MR. DAY: I do not base the argument on inconvenience one way or the other. I base it upon the ground of legal right. If you put that order into effect, if it is put into effect, you will give that employee at Niles who went out on a strike a greater right than he would have had if he had not gone out on that strike.

CHAIRMAN J. WARREN MADDEN: I was interested in your argument about these situations, and it seems to me that you have used them in reverse. I do not suppose there was any limitation whatever in any legal jurisdictional limits on the court's going as far as it can even though its remedy may be very imperfect, as of course a job in

Birmingham would be a very imperfect substitute for a job in Niles for a man living in Niles, but I did not suppose that any court had ever been criticized for doing the best it could by the way of remedy when the remedy was not a very good substitute.

MR. DAY: Well, the order does not take into consideration the right of the employer at all, you put a premium by your order, and I want you to consider that quite seriously, you put a premium by that part of your order upon the striker because he went out on a strike.

CHAIRMAN J. WARREN MADDEN: You do not call it a premium.

MR. DAY: Well, suppose at Niles there is no strike at all, and there is a strike at Birmingham. Then the plant closes down at Niles and closes down at Birmingham. Now, the man at Niles gets his job back when they open at Niles; the man in Birmingham gets his job back when they open in Birmingham. There isn't any way by which, if we open in Birmingham and it happens that the man in Niles has worked longer than the man at Birmingham that the employer has to say to the man in Niles, "Come on down and get this job," but talking about rights of men, you have suggested, the man working in Birmingham that has lived all his life in Birmingham, who has worked there all his life, who has raised his family there, I take it under the law, and under sound policy—

CHAIRMAN J. WARREN MADDEN: Now, wait just a minute, what right under the law, assuming that you have been guilty of unlawful labor practices, what right has the other man,—he hasn't any right at all?

MR. DAY: No, but when you come to the general meaning of the—

CHAIRMAN J. WARREN MADDEN: (Continuing) Well, he hasn't any legal right, you must admit that he hasn't any legal right. Now, the other man does have, you

have discriminated against him, you have kept him out of work.

MR. DAY: But kept him out of work at Niles.

CHAIRMAN J. WARREN MADDEN: The Board is attempting to remedy that.

MR. DAY: No, the Board is attempting,—I must proceed upon this proposition until I am satisfied it is true, that the Board is giving that man at Niles a better and bigger right as an employee than he would have had if there had been no strike at all by requiring us to give him a job at Birmingham if he has worked longer for Republic than the man at Birmingham has.

We contend that is a finding of discrimination upon the Board's part; if it is, it is going beyond any jurisdiction that the Board has, that it is not sound.

That is discussed in full in our brief and I do not want to spend any more of my time on that.

In addition, also, the order of the Board did not take into consideration men who had obtained substantially equivalent employment elsewhere, does not make any suggestion as to them, and you also make your order applicable to new plants of ours, whereas the additional evidence shows, and that has been injected into the case for the first time by this proposed order, that there is a different kind of work, different kinds of labor required at the new plants.

I just want to say a word now about this evidence as to violence. The Board mentions in its finding that it was split, to some extent at least, as a court of equity. You make your order applicable to 5,000 men not named in the complaint, you order us to reinstate those men, upon application. Not having any issue presented as to them in the complaint, we have never had any opportunity to show the Board whether or not one or a hundred more of those men specifically named has been guilty of some conduct which would bar his right to be reinstated.

Some of these men have inflicted damage upon the property of the company. There might be reason, if we knew that all the 5,000 men were contemplated in the Board's order, that we would show to the Board why they should not be reinstated. That right has been denied to us. That is covered in the additional evidence and in the offer of additional evidence.

It seems to me and always has seemed to me and I am afraid it always will—

CHAIRMAN J. WARREN MADDEN: (Interposing) Do I understand that you have in this offer of additional evidence every case of violence attributable to any of these people; that is, I notice some of your evidence—

MR. DAY: And I think this is a fact—

CHAIRMAN J. WARREN MADDEN: I notice some of your evidence speaks of men being guilty of disorderly conduct.

MR. DAY: I think we have in the offer of additional evidence all of the information we have available as to strikers who were found guilty or pleaded guilty of misdemeanors who were not named in our former offer of proof. I think that is a fact.

CHAIRMAN J. WARREN MADDEN: You seriously contend that if a man was fined $10 for disorderly conduct it is outlawing him as far as work is concerned.

MR. DAY: We contend that in any action when the striking man commits a misdemeanor, an act of violence, that he is barred, whether he is affected or not, because if the strike is unlawful his conduct is unlawful. In other words, we contend that if a man goes out on the picket line with a ball bat, waiting to swing it at somebody—

CHAIRMAN J. WARREN MADDEN: Is that what you call disorderly conduct?

MR. DAY: Just having a ball bat in his hands?

CHAIRMAN J. WARREN MADDEN: Yes.

MR. DAY: I don't know whether he would or not,

I think they would. I think patrolling around in front of our property with a ball bat in your hand would be disorderly conduct.

MR. DONALD WAKEFIELD SMITH: I notice some here were found guilty of suspicion and fined $15. That covers a multitude of sins.

MR. DAY: I think it does. I did not know anything about that.

CHAIRMAN J. WARREN MADDEN: Suspicion?

MR. DAY: If there is anything in there involving suspicion, I did not know anything about that.

CHAIRMAN J. WARREN MADDEN: I thought that was a Pennsylvania crime exclusively.

MR. EDWIN S. SMITH: Mr. Day, on this argument about violence on the part of strikers, suppose there had been provocation on the part of the company, do you consider that in any way legally offsets the situation you are describing?

MR. DAY: Of course, if you are sitting as a court of equity the question is as to whether or not those who seek relief come in with clean hands. Their conduct is under scrutiny. They are the ones who are seeking relief, we are not, and upon that basis their conduct would be important; ours would not.

CHAIRMAN J. WARREN MADDEN: You went into equity, got an injunction here. Did you advance in that case, claim that your hands were not as clean as they might have been?

MR. DAY: I was not in that case. You were in that case, Mr. Anthony Wayne Smith, the Canton injunction case.

MR. ANTHONY WAYNE SMITH: Not the first one.

MR. DAY: I think we did, but I can't answer the question, I was not in the case. The injunction was granted in Trumbull County, Ohio, the judge in that county granted the injunction and what took place in the Canton and Stark

County cases I can't tell you, I wasn't in either one of those cases.

MR. ANTHONY WAYNE SMITH: On that part I can say that there was.

MR. DAY: Now, upon this question of violence on the part of the strikers. We offered proof and reoffer to prove a great amount of violence on the part of the striker at all these different places. We think the Trial Examiner should have admitted that evidence, we think the Board ought to consider that evidence in coming to its conclusion in this case. If you are sitting here as a court of equity, to some extent at least, and you so indicate in your findings, it seems to me that the conduct of all of those engaged in the situation should be considered, and particularly the conduct of all of those who are asking reinstatement should be considered, and that you should not rule out evidence such as we offered in relation to the Warren and Niles and the Cleveland strikers.

MR. EDWIN S. SMITH: When you say the conduct of all those concerned, you include the company?

MR. DAY: Oh, I think so, although I do think, however, that the question of violence is a question that relates more specifically to the strikers, because they are asking the relief, and even if we have been guilty of violence, if we concede that for the sake of argument, they certainly would not be entitled to the relief if they are also in the first instance or at any time guilty of acts of violence.

MR. DONALD WAKEFIELD SMITH: You say, Mr. Day, that they are asking for relief. Is that a correct statement? This is merely a charge that is filed by the union here in behalf of the employees alleging that an unfair labor practice is committed by the Republic Steel Company. Now, any reinstatement of those strikers or any award of back pay is part of the remedy, so is it in the first instance, so far as they are concerned, a seeking of relief? Isn't it simply bringing to the attention of the United States

Government the fact, that as they allege, that the Republic Steel Corporation has committed an unfair labor practice? Now, the Board determines whether or not they have committed such unfair labor practice, and part of the remedy in order to establish a status quo results in the reinstatement of strikers with back pay.

MR. DAY: Well, I think after all no matter what the form of the proceeding may be, it is a proceeding in which relief is sought by those who file the charges, and they really ask for relief. Well, they don't say in so many words that they ask for anything, the Board files a complaint based upon charges; after all, when you get right down to it it is a proceeding in which they ask to be reinstated or to get back pay.

We have also a request for information here as to the manner in which these proposed orders and final orders were prepared. We have asked the Board to tell us—

MR. DONALD WAKEFIELD SMITH: Mr. Day, might I inquire whether it is customary when you have a case decided in a court to inquire of the judges how they decided the case?

MR. DAY: No, it is not, but we have felt in this case that the problems brought out and our client's specific request requires us to ask for that information, and we have asked for it.

CHAIRMAN J. WARREN MADDEN: You have asked for it.

MR. DAY: Yes. I have just about taken my hour, and I want to say a few words in reply, if you will indulge me, and I ask, therefore, that you examine the brief as to the legal questions that I have not touched upon and that you also examine the brief for the detailed discussion of the factual situations here involved.

I thank you.

ARGUMENT OF MR. ANTHONY WAYNE SMITH ON BEHALF OF THE STEEL WORKERS ORGANIZING COMMITTEE

MR. SMITH: Gentlemen of the Board, I now have with me the briefs. We filed a brief last night, and I would like at this time to ask permission to file three re-typed copies, that is, the original and two copies, in substitution for those that were filed yesterday.

It is a pleasure to be here on the other side of the table from Mr. Day. We have had occasion to be on the opposite side of the table in Ohio and in some of the cases which arose out of the steel strike. I confess that as I listened to counsel's able presentation of their somewhat legalistic contention with regard to jurisdiction and due process, I could not help letting my mind run to some of the scenes of the strike in Ohio last summer. I could not help my thoughts going back to my friends, members of the Steel Workers Organizing Committee in Warren, Canton, Youngstown, and Massillon. I could not help bearing in mind the reports that we get from Ohio or recent contacts that I have had with members of the Steel Workers Organizing Committee in Ohio. Here in this room, legalisms, legalistic split-hairs seem quite important, and indeed, they are important. They are important if we do not allow them to come between us and the realities of the industrial situation. As I said, in the State of Ohio for the last year, year and a half or two years, during the period during which the Steel Workers Organizing Committee was building up its membership, it was endeavoring, under the laws of the United States, to obtain the sort of recognition from Republic Steel Company to which it was entitled, the sort of treatment from Republic Steel Company to which it was entitled, the sort of treatment from Republic Steel Company to which it was entitled to obtain from the members of that organization, the sort of treatment to which they are en-

titled under the laws of the United States, under the policy and intent of the law.

Legalisms are important if you do not let them come between us and the things that happened during that strike, the methods that were used by Republic Steel during the strike, the consequences of that strike forced upon the Steel Workers Organizing Committee, and men and women and children in the State of Ohio.

Gentlemen, in this connection I know a lot of those men, women and children in the State of Ohio. I worked with them between two and three months. I know them personally, I know them by their first names, I know the suffering they went through, I know the suffering they are going through now. Men with high skill, rollers, chippers, other specialized experts in the production of steel, gentlemen sitting around doing nothing or working by the day as laborers, working on WPA jobs, and maybe working on such a job for a year. What does that do to a man's skill? I have talked at my house one night last week with some of the leaders of our organization who are here testifying in the LaFollette hearings, that came up here from Warren; they were discussing some of the aspects of steel, the making of steel, of the details which bear on the question of displacement of men by machines, and so forth, and they used a language which I just could not understand. They have a specialized language, they have a specialized skill all of their own, and one of them said, "Well, here we are, we are sitting here talking about trade, our craft, we haven't worked at it for a year and the way things look now maybe we will never work at our craft again."

The point is that the legalisms which counsel have granted have practically nothing to do with either the law or the real fact, the true social facts of this case, and I am appalled again as I have been before at the thought that the

contention can even be seriously advanced that the National Labor Relations Board does not have jurisdiction to review an order entered by it and to modify that order after withdrawing it or in any other way, regardless of the precise words of the statute.

And the Act was intended to confer upon this Board the right to enter certain remedial orders after granting fair hearing to the parties to be affected, and that was the only issue, and in regard to a fair hearing being accorded, the Board has practically overstated its authority throughout and tried the respondent by due process of law.

Reference is made to the Morgan case, and reference is made to the opportunity for argument, and it is contended that the respondent had that opportunity at the trial on the evidence in this case; whether it availed itself of it or not, I do not know and I do not care, but it had the opportunity. If it wanted to have opportunity for argument it should have asked for it, and it should not come in now and claim that it had been denied or anything in the way of fair opportunity to present its case, and that it should do that is a thing that speaks ill for the future of the possibility of adjustment of these industrial conflicts which must be contested and adjusted. There is only one way in which they can be readjusted and that is the attempt to work out reasonably fair and honest proceedings and in the essence of due process of law and in that respect respondents in this case have absolutely nothing about which to complain.

The same comment, the same general type of comment, is to be made in regard to the contention of respondent that it had no opportunity to meet the issue involved in the question of reinstating strikers. Respondent was under notice under the terms of the complaint that it had to meet the question of whether its unfair labor practices did or did not cause the strike, whether it had or did not have

anything to do with the strike. Counsel for respondent are thoroughly familiar with the cases that went before and the theory of remedies administered by the Board in connection with unfair labor practice strikes. It was fully aware that it had to meet the issue, had the opportunity to present that proof at the hearing, present any proof in that connection which it cared to present.

To come in now with an offer of proof after a year has elapsed and ask for a reopening of the record and ask for anything, and ask that even offers of proof be incorporated in the record is something which is certainly something which goes very close to the fundamental question here of the order of procedure which the Board must follow in cases of this kind. And respondent has argued about being given very little opportunity, about not being given sufficient opportunity to present their angles in this case; they can go on forever and a day presenting new evidence in cases of this kind and we submit that in proceedings of this kind they must be brought to a close at some stage of the case.

Respondent has been given full and complete opportunity at the hearing to introduce evidence on the question of unfair labor strike and to come in at this time and ask for the reopening of this case and the introduction of any further evidence which will result in further delay of the decision of this case is something that constitutes nothing less than a bar to simple functioning of the proceedings before the Board.

We have a very serious question. If proceedings of this kind can be dragged out forever by wealthy corporations, if they can put dozens of lawyers on a job like this, put them very exclusively on a job like this for a period of months, and if litigation of this kind is to be permitted to be opened up for the introduction of new evidence and this sort of thing can go on forever like the Little Steel strike in Ohio,

if they are permitted forever and a day to introduce new evidence, and to present new offers of proof, then there is no possibility of a proper enforcement of the law of this question, there is no possibility of its enforcement with the financial means available; there is no possibility of the enforcement of the law within a period of time which can give any sufficient and substantial relief to the employees involved.

With regard to Massillon and Canton, counsel asked to be allowed to make offer of proof of conflicts and fights on citizens in Massillon and Canton. I believe if we got into that whole issue we might very well ask to introduce proof of the domination by Republic Steel and Youngstown Sheet & Tube and the other small steel corporations over the law enforcement agencies of the State of Ohio.

I could take the stand and testify to a lot of that myself. We might show how men were arrested and held incommunicado without charges being placed against them of any kind for days at a time, and the necessity of getting blanket writs of habeas corpus to get union men out of jail, held there without charges being placed against them. I suspect it would not be a very difficult proposition to prove the close relationship between the local government and the State government of the State of Ohio to Little Steel.

The point is, gentlemen, that the Board cannot begin to go into all these issues, they have got to stop somewhere, it cannot act as a police court for the trial of petty offenses arising during the prosecution of a strike, arising presumably during the strike and brought about by respondent's own unfair labor practices.

We contend, in our exceptions and in our proof, that no striker should be denied reinstatement, regardless of any guilty pleas, regardless of the sentence that may have been enterd against them.

For a corporation to embark upon a union-breaking

expedition, upon a law-breaking expedition, if you please, and that is what the combination of Little Steel was last summer, and that is what Republic Steel was doing last summer, and then to come before this Board and say that John Jones should be denied reinstatement because he has been shown to have plead guilty or to have been convicted of suspicion and fined $15 is an insult to the intelligence of the Board. I do not care whether it is a crime, suspicion, if it be a crime, or whether this is a crime of greater magnitude, such as those on the basis of pleas of guilty of which certain strikers were sent to the Ohio State Penitentiary, men who are goaded into desperate resistance against a corporation's effort to overcome and to break down the law and to break a labor organization, those men are entitled to a very special kind of consideration from any tribunal which is enforcing the law and intends to protect the rights of labor. We believe that there is no very clear stopping point between one kind of crime and another, the differences are mostly of degree, and I think the essential fact to be kept in mind in a situation is that under the circumstances prevalent here the company cannot be heard to say that the reason why it refused reinstatement or would refuse reinstatement to any striker is that that striker may have been guilty of some offense for which he paid some penalty or for which he may not have paid any penalty in a State court, to embark upon a course of procedure such as is evident here is to break down the administration of the Act.

Further, the relative offense of a corporation which has embarked upon a program such as Republic Steel undertook last year and those of any striker, I don't care what he did, they are so different as to be non-subjectable to equitable balancing in any respect.

I should perhaps say a few words in reply to one or two other points which counsel has made. There is no question, of course, but the question of the refusal to sign

a contract was a very important issue at the time of the strike, that it contributed to the strike and evidence which has been tendered by counsel to prove that fact is completely immaterial, or cumulative at least.

For that resaon it should be denied admission.

The point in regard to refusal to sign a contract, of course, is the manner in which that refusal was made. Republic Steel made it perfectly clear. It was not that the issue was "We sign if we reach an agreement", but "we will not sign because we don't have to sign, regardless of whether you have a majority, regardless of the legal basis of your claims, we won't sign a contract with you, and we won't sign it now, we won't accept it, we won't sign it in the future and we don't care how the situation changes, we are not going to sign a contract."

Now, that is an entirely different question from the question of whether under circumstances where no claim of exclusive representation is made the corporation must at the time sign the undertaking to bargain exclusively with the union. The reason why Republic refused to sign a contract, and its announcement that it would not sign a contract, is an unfair labor practice, is that it was made in that manner, that it was the spear point of the announcement that the corporation would never under any circumstances deal with SWOC. Further it was the final issue involved in the corporation's definite intention to dispose of SWOC, they tried hard enough to do so, and the climax, the top, the end, the final straw in that whole development was that refusal to sign a contract, so that the necessity for any further evidence in regard to the fact that they refused to sign a contract was one of the issues in the case is immaterial, and further it is cumulative, and should be denied.

One final comment in rebuttal in regard to the issue of clean hands. I suppose counsel knows, as well as the Board does, as well as I do, that the answer to that which is

given where labor unions assert that corporations are not entitled to an injunction because if they come into court with unclean hands, is that two wrongs do not make a right. That is one point. And I return again to the other point that in a strike which follows, has been invoked by the unfair labor practices of a corporation, that the difference between those particularly affected that are made by Republic Steel in any event and any offense on the part of SWOC, is so great that the two were incomparable.

Certain points were made in regard to the reinstatement of employees, and since our exceptions in the brief deal entirely with the proper form or procedure, I will now turn to that point.

Counsel protest against the necessity of sending men to plants other than those in which they worked. They have offered proof incidentally, to a considerable amount, of changed situations in regard to the plant; the number of plants which are not now working, and that new plants have been opened up.

Be that as it may, it is a reasonable supposition that there would be a considerable number of cases of changes in the production procedure in the plant since the hearings.

The order of the Board should be broad enough to take care of that sort of a problem. It should be broad enough to permit an employee of the Republic Steel, where his plant has been shut down, to get employment at some other place, some other plant. I don't believe that counsel seriously contends that there is any very complicated problem as between the plants in the State of Ohio.

In regard to the other plants, it seems to me that it should be very possible, when the time comes, to work out a procedure of reinstatement, and that then if there was a very serious problem involved, it could be considered at that time in accordance with proper, customary procedure under ordinary administrative law.

The second thing is to have the order of the Board broad enough to permit whatever steps should properly be taken that might necessarily be taken in order to reinstate men to something equivalent to their former position so far as may be possible.

In fact, we should have taken exception to the order of the Board in that respect. We should have asked that the respondent be required to pay the traveling expenses and the other expenses incidental to the transfer of any striker from the state of Ohio to Alabama, and it just occurs to me at the moment, it might be a very good idea, so I make that suggestion and request formally that the order of the Board be broadened to take care of that sort of a situation.

Now, as we read the order of the Board, there is a possibility that some of the sections might be construed as limiting the amount of back wages to be paid strikers to the time of an application made after the proposed order of the Board, after any final [order] of the Board, entered into pursuant to the proposed order.

We have taken exception to the proposed order in that respect and we wish to present to the Board the contention that any application for reinstatement made by a striker at any time after the beginning of the strike should constitute the basis of the beginning of accrual of back wages.

Again I go back to the industrial realities of this situation, gentlemen. Five thousand men, more or less, have been out of work in the State of Ohio as the result of respondent's unfair labor practices. They have been subsisting on union relief and public relief, state, local and national.

The American people have been paying a price, a large portion of the price of respondent's unfair labor practices. The taxpayers have been carrying that burden. Union

members in other organizations have been carrying that burden.

Respondent knew very well that it was required to meet the issue of unfair labor practices and having caused these strikes.

That quite sufficiently puts that issue before us.

Applications were made all through that period. It should be possible to prove, in a compliance and enforcement proceeding, that they were made, if respondent compels us to go to that length.

It should be proper for our members to submit their proof to respondent that they made application prior to the final order of the Board and that they were denied reinstatement, so from that day back wages would accrue, so that there would be some possibility of placing upon the respondent the cause of its own unlawfulness; so that there would be some possibility of lifting from the public the cost of respondent's unlawful actions.

In that connection we have taken another exception to the form of the Board's order in that it rather expressly refers to the deduction of earnings from the amount of money to be paid by the respondent in the form of back wages.

The Board has ruled in previous cases that a form of relief insurance—similar funds received by strikers are not to be deducted from back wages. The statute uses the term "back wages." It doesn't say to make whole. It doesn't say to compensate for losses. It uses the term "back wages," and we have recommended that the Board require the payment of back wages without the deduction of any earnings from public work relief, WPA or otherwise, subject to the proviso that the employee receiving such monies pay them over to the public relief agencies to the extent that such earnings have been received in work relief

from such agencies, up to but not exceeding the amount of back wages received.

I might say that unless this policy is followed in connection with this particular case, the remedial penalty, as I believe respondent has chosen to refer to it in one section of the brief, will simply be of no effect whatsoever, or it will, at least, be very greatly reduced in its effect.

Moreover, the public and the labor organizations will have been required to pay the greater amount of the financial burden resulting from a strike induced by the vicious attempt to break the law on the part of the respondent.

With regard to the applications again, or to go back to the time of application, we believe there is no substantial difference between the applications made before the close of the hearing and those made after the close of the hearing.

Workers cannot be required to know the intricacies of legal procedure; to know that they had an opportunity, perhaps, to file their charges before the hearing was over, or to make distinctions of that kind.

The statute of limitations cannot be imposed. They are not imposed by the Act and they should not be imposed by its administration.

There is even less reason for excluding from the effect of this order of the Board any strikers who made application after the close of the hearing and before the first order of the Board, or before the final order of the Board and the first order of the Board; there is even less reason for that, for excluding any of those who made application after and on the basis of the first order of the Board.

There are those three classes of employees who have made prior application, and the order of the Board must be framed in such a way that those applications can be proved in whatever proceedings may be necessary for compliance and enforcement of that order.

It must be framed in such a way that all that will be necessary to shew at those compliance proceedings is that the application was made.

Moreover, we call specific attention to the fact that no particular form of application must be required; further, that the form of the application, whatever it may be, is completely immaterial so long as it evidences a return to work, go back and return to work under the law at that time.

It is a reasonable supposition, for example, that applications to return to work were made on the basis of the first order of the Board in this case; that they were made with reference to that order.

We contend that any such application indicated an attempt to return to work at that time, if not before; further, that it should not supersede any application to return to work, and that the form in which they were made is completely immaterial, provided that the intent is sufficiently expressed.

CHAIRMAN MADDEN: Mr. Smith, you think it would be a practical matter for this company to reinstate these strikers, that is, as they return more or less casually, one today and three tomorrow, and so forth?

Now, the proposed scheme for reinstatement, of course, presupposes a very substantial readjustment on the part of the company, the shuffling up of jobs, which I suppose they would want to do, some of them almost every day, which I think it might not be practical for them to do at all, except over sort of a limited period in making this readjustment on more or less a wholesale basis.

Don't you see a difficulty there?

MR. ANTHONY WAYNE SMITH: Well, I don't think it is a very serious one, Mr. Chairman.

In the first place, the company has had before it a very

substantial number of applications.

If I may be permitted, in answer to your question, in discussing this point, to go off the record to that extent, applications made after the first order of the Board were made in a systematic and orderly fashion, properly served upon the respondent, which would have made it possible for an immediate compilation of lists, immediate arrangement of those lists in accordance with seniority rights.

Evidence in regard to those issues was obtained and is available. If the company evidences any intent whatsoever to comply with the order of this Board, we can assure you that full cooperation will be given in an effort to work out these arrangements.

It is quite obviously a thing which cannot be worked out in precise detail so that every man involved can stand strictly on strict legal rights; the issues are too complicated; the numbers of men are too many and the problem of getting them back to work promptly is too important, and it is a practical problem which has to be worked out, when we come face to face with it.

The question is, is the company going along or is it going to fight. If it is going to fight, gentlemen, it is absolutely impossible for this thing to be done until we get a court order so that we can impose penalties of some kind.

I assure you, however, that the Steel Workers Organizing Committee intends to cooperate if there is any such intention whatsoever on the part of the corporation. If both parties cooperate in this problem there is no reason why both parties cannot work it out in quite a satisfactory manner, specifically in regard to that precise issue.

Most of these applications were made at about the same time. Most of those were made as a result of your order; made out about the same time. They could have been considered together by the respondent; they could have been

arranged and reinstatements made then; arranged in a systematic manner. The respondent has all those matters before it.

It has a record of them, or should have, and if it imposes an expense and trouble on the respondent to work out this thing, put things back the way they were, the respondent itself is to blame.

I don't see how we can take that burden, or the fact that the Board can be expected to lean over backwards in protecting the comfort and the convenience of the corporation, which is responsible for all this trouble.

MR. DONALD WAKEFIELD SMITH: You claim, Mr. Smith, there were applications for reinstatement made prior to the Board's order of April 8th.

MR. ANTHONY WAYNE SMITH: I am quite certain that in the enforcement of this order it will be found that there were a great number of such applications made.

It is our contention that it should be possible to show those applications and that employees who made such applications should be entitled to back wages from that time.

Certainly, the order of the Board should be broad enough to admit that proof in a compliance proceeding, if necessary.

MR. EDWIN SMITH: Is there testimony in the record as to persons who applied and were not accepted?

MR. ANTHONY WAYNE SMITH: There was testimony in regard to specific cases. I am not sufficiently familiar with the transcript to say whether there were or were not. It seems to me that that is quite an obvious probability. It is a thing of which I suppose the Board in an administrative matter should have simply in mind.

Whether it is a question of taking judicial notice or not, I don't know, but certainly as an administrator of the Labor Act, you should have in mind that there is a possibility

that strikers, after an unfair labor practice, will in a certain number of cases apply to go back to work, and that they will do so before there is an order in the case, and that such striker should be entitled to back wages from that time.

On the issue of persons having obtained substantial, equivalent and permanent employment elsewhere, which counsel has raised, we believe that there is some possibility that the order of the Board is not entirely clear in that respect, inasmuch as it refers to employees, and the definition of the Act, as it has been asserted—that the definition, I think, under the Act, is one which would exclude from the remedies of the Act persons who had to take regular and substantially equivalent employment elsewhere.

We believe that there are at least two reasons why the order of the Board should be so phrased as to be applicable, as to make the remedy applicable to those in regard to whom the contention might be advanced that they have obtained employment elsewhere.

We believe that the person to decide that issue is the employee himself. If he has employment elsewhere; if it is really permanent and really substantially equivalent, then he is not going to make a change. He is not going to make a change back to Republic Steel. He is going to stay where he is.

The second point is that if we permit the encumbrance of enforcement proceedings, which are already going to be tremendously difficult, the whole enforcement procedure with issues of this kind, as to whether a man is or is not a striker, is or is not employed, if five thousand strikers have or have not obtained regular and substantially equivalent employment elsewhere, nobody is going back to work for another year or two.

These issues are ones which have not been entirely worked out. They are new issues and during the course of

the next year or so the Board will be considerably concerned with working out issues of this kind, since they relate to compliance.

Labor organizations will again be extremely concerned with issues of this kind. We are concerned with them here and are criticizing them for that reason. It is highly essential that the enforcement proceedings or compliance proceedings be worked out; that the procedure or arrangement of enforcement of the Board's orders be worked out in such a way that delay be avoided at all hazards; that they be made as promptly and simply applicable as can be done.

For that reason we believe that the issue of having obtained substantially equivalent employment elsewhere is one which should be omitted, is one which can be omitted under the Act insofar as the Board has broad powers to order affirmative relief.

Similarly we have advanced the contention and have pressed it in certain cases in regard to which charges were filed in these proceedings, in regard to which motions to dismiss were obtained before the Trial Examiner, some thirteen or fourteen in number, I believe, and also certain other cases as to which rather complete groups of discrimination, discharge, lay-off or refusal to reinstate was adduced, but which were dismissed because the names were not mentioned in the complaint, and should not have been dismissed, and if it is permissible at this time to take exception to the decision of the Trial Examiner in so doing, we take that exception, and we have included that exception in the exceptions filed day before yesterday, and we have discussed it in the brief.

In any event, we take exception to the order of the Board insofar as it denies relief to these men. We believe again that these are issues which it should be possible to deal with in a compliance and enforcement proceeding;

that the order of the Board should be so framed so as to permit that to be done.

I am not at all sure whether labor organizations will want to do that; whether they will want to adduce proof where sufficient proof has not been adduced in a compliance proceeding in court.

In regard to cases in which full proof has been brought into the record, however, and where nothing but a motion to conform the pleadings to the proof is necessary to regularize the proceedings, then certainly in cases like that the order of the Board should be broad enough to cover any such employees.

In conclusion I want to come back again to the whole background of this case.

There are thousands of men in the state of Ohio who regard the officers of Republic Steel as murderers, and I believe no weeping or wailing or legal technicalities is going to change their minds in that respect.

Respondent in its brief says that everyone knows that the steel strike was caused by the refusal to sign a contract. Well, it isn't so. Everyone knows that the strike was caused by the determination of Tom Girdler and his associates to do two things:

To break the Steel Workers Organizing Committee, at which you gentlemen failed most dismally, and to break the National Labor Relations Act, at which, gentlemen, you are also going to fail most dismally.

And, the truth of this is, and it just can't be lost sight of, is the fact that there was a vast conspiracy between Republic Steel and its associates to do just those things, to break the law and to destroy labor organizations, and to use any method whatsoever in so doing.

We ask for a final order of the Board, to grant the relief proposed in the proposed order of the Board, subject

to the broadening of the terms of the sections of the order proper, such as to permit a proper administration of the remedies guaranteed by the Act.

MR. DAY: May I have just a moment?

This is the first time that we have had an opportunity to examine the brief of the SWOC. We have examined the Act, and I personally have never had the question before me for any consideration before that the SWOC, as the charging party, has the right to file exceptions.

Now, if that is true, of course, I raise no question about it. I don't know whether it is true or not.

CHAIRMAN MADDEN: Yes, it is true.

MR. DAY: One part of the Act seems to indicate that.

Now, I don't know whether any time was fixed for the filing of their exceptions; whether there was a time extended for the filing of their exceptions or simply for the filing of their briefs.

If there is any question about that, of course, we wish to take all the advantage there is in it, but assuming that the exceptions are here and are properly filed—

CHAIRMAN MADDEN: Mr. Smith, were you given any definite time within which to file?

MR. ANTHONY WAYNE SMITH: Yes, I was given until Tuesday in which to file exceptions.

MR. DAY: The 9th?

MR. ANTHONY WAYNE SMITH: And until yesterday to file a brief.

MR. DAY: I saw the order granting time to file a brief. I am not sure I saw the order to file exceptions.

Well, I guess there is no question but what it is there. This is the first time we have seen the exceptions and the first time we have seen the brief, and the Board has been very generous in its time allowance, and I will only take a second.

The suggestion is made here that the Board's order should require us to reinstate certain strikers who applied for reinstatement pursuant to the Board's order of April 8th.

In regard to that we simply say this:

Those applications were filed pursuant to your order. The order has been set aside. We don't think that we need to take any time of the Board to discuss the proposition that the Board should not regard those applications for reinstatement as having been filed at all; having been filed concededly pursuant to an order which the Board itself has set aside.

Now, Mr. Smith went considerably outside of the record and he said some rather unkind things about the respondent here. I think it is a good rule anywhere, in any proceeding, when anything is said about your client, that you represent, which is not true, that you say something about it.

Now, I simply want to take a moment, not by way of wailing or moaning, but by way of a positive fact that this suggestion that the respondent officers are murderers or that there is any connection between the respondent and the law enforcement officers of Ohio, is absolutely untrue and absolutely unfounded.

(Whereupon, at 12 o'clock, noon, arguments in the foregoing matter were concluded and the Board adjourned.)

(Continued On Page 833, Volume II.)

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